

THE
ANTIENT RIGHT
OF THE
Commons of England
ASSERTED;
OR, A
DISCOURSE

Proving by
Records and the best Historians, that the Commons
of England were ever an *Essential* part
of Parliament.

By WILLIAM PETTY of the
Inner-Temple, Esq;.

*Nonnulli sedio investigandæ veritatis cuilibet opinioni potius ignavi
succumbunt, quam explorandâ veritate pertinaci diligentia persue-
rare volunt. Min. Fœlix.
Inter pericula veritatis & libertatis silent amicitia.*

LONDON,
Printed for F. Smith, T. Bassett, J. Wright,
R. Chiswell, and S. Heyrick, 1680.

Brown & Brown J. 11. '52 7/6 (1845)

To the Right Honourable
Arthur Earl of ESSEX,
Viscount MALDON, Ba-
ron Capell of HADHAM,
Lord Lieutenant of the
County of HERTFORD,
one of his Majesties most
Honourable Privy-Coun-
cil, and First Lord Com-
missioner of his Majesties
Treasury.

MR LORD,

There have been Au-
thors of modern times,
who have in their Writings,
concerning the Government
of this Kingdom, published

to

Bones & Bones
444 # 0723
J. 11. '52
7/6 (872.)

THE EPISTLE

to the World, *That the Commons of England (as now phrased) were no part of the antient Commune Concilium, or Parliament of this Nation, before the forty ninth Year of H. 3. and then introduced by Rebellion.*

A Position when seriously weighed, equally wounds the *Peerage of England*, since the same Authors say, that there is no formal Summons of the *Lords to Parliament*, found upon Record before that time.

After I had often considered so great a point, and having often read of the
freedom

DEDICATORY.

freedom of this Nation, that no *Englishman* could lose his *right* or *property* but by *Law*, the Life and Soul of this so famous and so excellently constituted *Government*, the best *polity* upon Earth (which when united in all its parts by prudent *Councils*, made always the *people* happy at home in *Peace*, and the *Crown* ever Victorious abroad in *War*) I did resolve to take *pains* to search, if matters thus represented to the *biggest* disadvantage and prejudice of the *people* of *England*, were *true* or *false*; which I have industriously and

2 impar-

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impartially endeavoured, and hope with that clearness, that will evidence to all unbiassed judgments, the unsoundness of those *Opinions*.

When I had so done, being unwilling my *labour* should be to my self alone, and not to those who search after *knowledge* in these matters, to disabuse and prevent others from building upon such *mistaken* and *dangerous* Foundations, I thought it not unseasonable to publish this *Discourse*, wherein there is no *Record* cited, but (in my opinion) equally asserts the right of the

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the *Peers* of this Kingdom,
as well as of the *Commons*,
and therefore have taken
the boldness to send it in-
to the *World* under your
Lordships Protection, whom
I know to be a great *Lover*
of *Truth*, To which all *man-*
kind ought to pay *Allegiance*.
I should have had great *satis-*
faction, if before it had been
put to the *Press*, it might
have received your *Lord-*
ships judicious *corrections*
and *approbation*, whose
knowledge and industry in
venerable Antiquity, and all
other *useful Learning*, is well
known unto the *World*.

But

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But this *happinefs* I could not reasonably expect, your Lordships time being so much taken up in the service of the *Crown*, whereof your *Lordship* is so eminent, and so great a *Pillar*, as your Honourable Employments both *at home and abroad*, do sufficiently demonstrate. I most humbly beg your Lordships *Pardon* for my presumption in this *Dedication*, which fault I hope may be extenuated by the relation I have to your Lordship in my *Profession*, and being deprived of other means, publickly to shew my

DEDICATORY.

my *bumble gratitude* for the
many favours your Lord-
ship has been pleased to con-
fer upon,

My Lord,

*Your Lordships most humble,
most faithful, and most
obedient Servant,*

W. Petyt.

THE

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THE PREFACE.

M^{*Y*} principal design in this following Discourse, is impartially to vindicate the just honour of our English Parliament from the calumnies and reproches of some late Authors who have asserted,

1. That an essential part of that Great Council, viz. the Commons of England, represented by the Knights, Citizens, and Burgresses in Parli-
A 3. ment,

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ment, were introduced and began An. 49 H. 3. by Rebellion.

2. That before that time the Commons were never admitted to have any Votes, or share in the making of Laws for the Government of the Kingdom, nor to any Communication in affairs of State.

To discover and refute the unsoundness of the second Position, and that the contrary may appear to be true, I shall before I come to answer the first, consider the second, and endeavour to prove, that during

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ring the Brittish, Saxon, and Norman Governments, the Freemen or Commons of England, as now called and distinguished from the great Lords, were pars essentialis & constituens; an essential and constituent part of the Wittena Gemot, Commune Concilium, Baronagium Angliæ, or Parliament, in those Ages.

I. Under the Brittish Government.

THE Brittons called *their* Commune Concilium, or Parliament, Kyfr-y-

Spelin. Cencil.
Tom. 1. p. 34.

A 4 then,

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then, because their *Laws* were therein ordained; and upon K. *Lucius* his Letter to Pope *Eutherius*, to send him the *Roman Laws*, the Pope who could not be ignorant of the constitution and frame of the *British Polity*, writes back to him, *Habetis penes vos in Regno utramq; paginam, ex illis Dei gratia per Concilium Regni vestri sume legem, & per illam Dei potentia vestrum rege Britannia Regnum But what their Laws and particular Government were, is very uncertain, by reason that Scripta Patriæ (as Gildas sayes) Scriptorumve Monumenta*

Erat Britannia
viginti & octo
Civitatibus
quondam no-
bilissimis in-
signita præter
Castella innu-
mera quæ &
ipsa muris, tur-
ribus, portis ac
feris erant in-
structa firmiss-
simis. Beda
Eccl. Hist. Lib.
1. Cap. 1.

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menta (si quæ fuerint) aut ignibus hostium exusta aut Civium exulum classe longius deportata non comparent.

The Histories of our Country (if there were any) are not to be found, being either burnt by the Enemy, or carried beyond the Seas by the banished Brittons. Yet this is certain, and not to be denied, that in their elder time, the People or Freemen, had a great share in their publick Council and Government. For Dion Cassius, or Xiphiline out of him in the Life of Severus assures us, Apud hos i. e. Britannos populus magna ex parte principatum tenet. 2. Un-

Xiphilin. è Dion Cassio p. 601. impress. Basiliz.

2. Under the Saxon Government.

I*T cannot be doubted but that the Saxons who made themselves Masters of the Brittain Nation, brought with them their Country Laws, and Government; and that the Commons were an essential and constituent part of their Commune Concilium, Tacitus tells us, De minoribus rebus Principes consultant, de majoribus omnes, ita tamen ut ea quoq; quorum penes plebem arbitrium est, apud Principes prætractentur.*

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After the Saxon Government became united and fixed under a sole Christian Monarch, they still continued and kept their antient Wittena Gemots, or Parliaments, as now phrased, wherein they made Laws and managed the great affairs of the King and Kingdom, according to the Plat-form of their Ancestors. Many Authorities might be given to evidence this, I will instance in three or four.

1. *then, We have that famous Parliament summoned by King Ethelbert, An. 605. which my Author calls, Commune Concilium tam Cleri quam populi.*

Spelm. Concil.
Tom. 1. p. 126.

2. A-

Idem Tom. I.
pag. 219.

2. *About the Year 712. King Ina assembled a great Council or Parliament, where- in he made Ecclesiastical Laws concerning Marriages, &c. and did other things, ad concordiam publicam promovendam per Commune Concilium & assensum omnium Episcoporum, & Principum, Procerum, Comitum & omnium sapientum seniorum & populorum totius Regni.*

Ecd. Ecclef.
Histor. lib. I.

3. *And we read elsewhere, that the grand League and Union between the Brittons, Saxons, and Picts, was concluded and confirmed, Per Commune Concilium & assensum*

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sum omnium Episcoporum,
Procerum, Comitum & om-
nium Sapientum seniorum &
populorum & per præceptum
Regis *Inæ*.

4. *Anno Dom. 905. Pleg-*
mundus Cantuar. Archiepi-
scopus unacum Rege magni-
fico cognominato *Edwardo*
Seniore *Concilium magnum*
Episcoporum, Abbatum, Fi-
delium, Procerum & *Populo-*
rum in Provincia *Gewisorum*
(in illa parte *Angliæ* quæ in
plaga australi sita est Flumi-
nis *Tbamesis*) convocant,
&c. unde salubriter *constitu-*
tum est in hac *Synodo* ut
pro duobus Episcopis quo-
rum

Antiquit. Bri-
tanniæ, p. 75.

Parliamentum
Synodus mag-
na nuncupatur.
Somneri G. off.

rum unus *Wintoniæ*, alter *Sireburniæ* sedem habuit, quinq; crearentur *antistites*, ne grex Domini pastorum cura orbatus luporum lanienæ & voracitati subjicerentur; *and there were several other Laws then made.*

Malmesb. lib.
3. p. 56. l. 24.

William of Malmsbury expresseth the Saxon Witte-na Gemott thus, Generalis Senatus & Populi Conventus & Edictum.

Spelm. Gloss.
Fit. Gemotum,
fol. 261.

Sir Henry Spelman: Convenere Regni Principes tam Episcopi quam Magistratus liberiq; homines, consulitur de communi salute, de pace & bello & de utilitate publica promovenda. Cam-

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I I

Camden thus: Quod Saxones olim *Wittena Gemot*, nos *Parliamentum*, & *Pan-anglicum* recte dici possit, *summamq;* & *sacro sanctam* auctoritatem habet in Legibus ferendis, confirmandis, antiquandis, interpretandis & in omnibus quæ ad Reipublicæ salutem spectant. And so we find Edward the Confessor reforming and confirming the antient Saxon Laws, and making new ones, and that done à Rege, Baronibus & Populo, as particularly in the Law de Apibus, how Tythes ought to be paid of them, and other things.

Camd. Britan.
in 8°. impress.
1586. fol. 63.

Lambard de
priscis Anglor.
Legibus Cap.
8. fol. 139.

Hence

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Hence it is apparent and past all contradiction, that the Commons in those Ages were an essential part of the Legislative power, in making and ordaining Laws, by which themselves and their posterity were to be governed, and that the Law was then the golden metwand and rule which measured out and allowed the Prerogative of the Prince and Liberty of the Subject, (and when obstructed or denied to either, made the Kingdom deformed and leprous.) That great Monarch Æthelstan, in his Prologue to his Laws, made per Commune Concilium Regni,

Bracton f. 134.
Coke 12. Rep.
fol. 65. Plou-
den. Commen.
fol. 236, 237.

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Regni, *thus declared and admitted*; Ea mihi vos tantummodo comparatis velim quæ juste ac legitime parare possitis. Neq; enim mihi ad vitæ usum quicquam injuste acquiri cupiverim, Etenim cum ea ego vobis *lege vestra* omnia benigne largitus sim, ut *mea* mihi vos itidem concedatis.

Snelmanni Concilia pag. 39, 397.
Chron. Johannis Brompton, Col. 841.

I have past over the Danish Government, because I do not find that there was any great mutation, either of the Council or Laws of the English Nation. It is true, King Knute obtained the Diadem or Dominion of England; but

a

'tis

Inter Commu-
nia de Term.
Sanctæ Trini-
tatis an. 7 E. 2.
pces Reme-
morate
Dorreni The-
saur. in Scac-
cario remanen-
Chara Regis
Cas.

will. Malmsh.
de Gestis Reg.
Anglor. l. 2.
pag. 41. b. l. 16.

'tis as true he did not govern more Victoris, as may evidently be proved, 1. From the form of penning his Laws, they being ordained and confirmed, Cum consilio & Decreto Archiepiscoporum, Episcoporum, Abbatum, Comitum, aliorumq; omnium fidelium, words of a large comprehension. 2. From his general Law, or Declaration of Right to the English thus delivered to us by a faithful Historian, William of Malmesbury, who lived near those times. Obtestor & præcipio meis Consiliariis quibus Regni Consilia credidi,

di, ne ullo modo aut propter
meum timorem aut alicujus
potentis personæ favorem,
aliquam injustitiam, amodò
consentiant vel faciant pul-
lulare in omni Regno
meo. Præcipio etiam omni-
bus Vicecomitibus & Præ-
positis universis Regni mei
sicut meam volunt habere
amicitiam aut suam salutem,
ut nulli homini nec diviti vel
pauperi vim injustam infe-
rant, sed omnibus tam Nobi-
libus quam ignobilibus *sit fas*
justa lege potiundi, à qua
nec propter favorem Regi-
um nec propter alicujus po-
tentis personam, nec prop-

1g. 42. l. 21.

ter mihi congerendam pecuniam ullo modo deviant; *quia nulla mihi necessitas est, ut iniqua exactione pecunia mihi congeratur.* After which the Historian says: Omnes enim leges ab antiquis Regibus & maxime ab Antecessore suo *Ethelredo* latas sub interminatione Regiæ multæ perpetuis temporibus observari *præcepit*, in quarum custodia etiam nunc tempore bonorum sub nomine Regis *Edwardi* *juratur*, non quod ille statuerit sed quod observaverit.

3. Under the Normans.

King *William* the First.

T*Hough William the Conqueror got the Imperial Crown of England, and introduced several Arbitrary Laws, as new tenures, &c. yet did he never make such an absolute Conquest, nor did the Kingdom receive so universal a change, as our English modern Authors (as it were by a general Confederacy, without examination of truth) have published to the World, who father upon this revolution all the alterations which*
a 3 *their*

Lib. I.

their conceits or fancies can imagine and suppose. Thucydides saith, Men receive the report of things, though of their own Country, if done before their time, all alike, from one as from another, without any examination; In like manner have those our Historians been mistaken, by transcribing and patching out their Histories one from another, so that in conclusion, with their own additions or comments, truth in many things is utterly lost.

I. *The word Conquestor or Conqueror, did not in that Age import or signifie what*
our

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our late Authors by flattery have since made it; nor did it carry with it the enslaving of the Nation, after that William had obtained the Victory against Harold, there being no more in the Denomination of Conqueror, than that after William had made claim to the Crown from King Edward the Confessor, and Harold opposed him, he was forced to get his right by Bat-tel against King Harold; and as to the word Conquestus or Conquest, Mat. Paris writes, Mat. Paris. pag. 941.
 Rex Angliæ ex Conquestu
 dicitur tamen, quod beatus
 Edwardus, eo quod hærede
 a 4 caruit,

Spelm. Gloss.
Tit. Conque-
stus.

Robertus filius
Nigell. petit
versus Ricar-
dum Battail
Capitale Mes-
suagium, &c.
Ricardus venit
& dicit quod
pater, &c. fuit
persona Eccle-
siæ de conquestu
suo, &c. &
dedit, &c. Pia-
cita de terris
Mich. 2 Jo-
hannis penes
Camera. Sec-
carii remanen.

caruit, Regnum legavit *Wil-*
lielmo Bastardo Duci Nor-
mannorum. Sir Henry Spel-
man in his Glossary sayes,
Willielmus primus Conquestor
dicitur quia Angliam con-
quisivit, i. e. acquisivit, *pur-*
chased, non quod subegit. And
Sir John Skene Clerk of the
Register Council, and Rolls
to King James in Scotland,
in his Book, De verborum
significatione, pag. 39. writes
Conquestus signifies Lands
quhilk ony person acquiris,
and possessis privato jure, vel
singulari titulo vel donatione
vel singulari aliquo contractu.
And therefore the learned
Knight,

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Knight, Sir Roger Twisden, who well understood the force of the word Conquestus, in his Preface before that Kings Laws, sayes, Non existimo Willielmum primum de omnium Anglorum terris ad voluntatem suam & prohibitu in modum absolutæ dominationis disposuisse.

And Lamberdum.

All which is most plain and justified infallibly by Doomesday Book, made in that Kings Reign, and in other subsequent Records, where the title and claim of many common persons to their own and Ancestors possessions, both in his time and in the time of the

Sildens Review of his History of Tythes. Sir John Davies Reports, in his Case of Tanuistries 41.

*the Saxon Kings, are clearly allowed; but if King William had made an absolute and universal Conquest of the Realm in the modern sense, how could such Titles have beld, or who would or durst have made such claim, even against the King himself? would he not have seized all into his own hands, and granted the Conquered Lands to others? and his grant could not have been avoided by any Englishman who had the inheritance and possession, and lived in peace before and at his coming in, and no title could be derived but from or
under*

ly under him, at least none could have been maintained against his Grant. But that the contrary was true, will evidently appear if we consider, 1. That it is recorded in Doomesday Book, that King William had certain Lands in Demesne, viz. the Lands which were in the hands of King Edward, and entitled Terræ Edwardi Regis, and other Lands, which were forfeited to him by those who took part with Harold, entitled Terræ Regis. 2. William the first having given away Sharnborn in Norfolk, to Warren a great Favourite, one of his Nor-

Camd. Britan.

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Normans; Edwinus de Sharnborn, being an Englishman, and true owner of the estate, demands his right in open Court, before the King, upon this reason of Law, that he never was against the King, either before or after he came in; whereupon the King, vinculo juramenti astrictus, gave judgment of right against the Norman, and Sharnborn recovered the Lordship. Sir Henry Spelman out of an antient Manuscript concerning the Family of the Sharnborns in Norfolk, hath it thus. Edwinus de Sharborne
 &

Spelmans Glossary verbo Drenches, pag. 184.

& quidam alii qui ejecti fuerunt è terris suis, abierunt ad Conquestorem & dixerunt ei *quod nunquam ante Conquestum, nec in Conquestu nec post fuerunt contra ipsum Regem in consilio & auxilio, sed tenuerunt se in pace.* Et hoc parati sunt probare quo modo ipse Rex vellet ordinare. Per quod idem Rex fecit inquiri per totam *Angliam* si ita fuit, quod quidem probatum fuit: propter quod idem Rex *præcepit ut omnes qui sic se tenuerunt in pace in forma prædicta, quod ipsi rehaberent omnes terras & dominationes suas adeo integre*

tegre & in pace ut unquam habuerunt vel tenuerunt ante Conquestum suum. This is cited almost as the only case or act of favour the Conqueror did; but that is a great mistake, for many other instances I could give of this nature, all acts of Justice and right, as appears in the Doomesday Book; much more may be said upon this subject. I will only add the Judicious assertion of a great Lawyer and Judge in Edward the Thirds time, admitted and agreed as a rule of Law and truth, by the Judges, and transmitted to posterity.

Le

Le Conqueror (*saith he*) ne vient pas pur ouster eux, qui avoient droiturell possession, mes de ouster eux que de lour tort avoient occupie aucun terre en desheritance del Roy & son Corone. *It was spoken upon an objection made in a Quo Warranto against the Abbot of Peterborough, concerning a Charter granted by King Edgar to that Abbey, which the Kings Council would have avoided upon this pretence for want of a better, because by the Conquest all Franchises were devolved and come to the Crown.*

*Shard. in Cal.
in Itin. Temp.
E. 3. fol. 143. b.
Johannes Shar-
delowe unus
Justic. de Ban-
co. Rot. Par.
16 E. 3. pars
1. m. 2.*

2. King William claimed
the

In ore gladii
(saith he) Reg-
 num adeptus
 sum, Anglorum
 devicto Haral-
 do Rege cum
 suis complici-
 bus qui mihi
 regnum cum
 providentia
 Dei destina-
 tum & benefi-
 cio concessio-
 nis Domini &
 cognati mei
 gloriosi Regis
Edwardi con-
 cessum conati
 sunt auferre,
&c. Chart.
westm. in in-
spex. Part. 7. 1
E.4. membr. 26
 MS. penes me-
 ipsum.

the English Diadem, Jure hæ-
reditario, from Edward the
Confessor, which both his
own Laws, Charters, and the
Charters of his two Sons
William and Henry, do
fully prove: There are some
indeed that mention that he
obtained the Crown, ore gla-
dii, but that must be under-
stood quod jure belli contra
Harolaum ipse acquisivit, as
a Manuscript Historian sayes.

3. He did not make an
 actual Conquest by his Arms
 (when he came in) of the fifth
 part of the Nation, for the
 Pope having sent him a con-
 secrated Banner, and a Bull
 of

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of Excommunication against the Bishops and Clergy, if they opposed him in adhering to King Harold, and he having got the Victory at Hastings, and the Clergy with several of the Nobility (whom he had purchased to his part, both by money and great assurances of preferment and other advantages) basely and treacherously deserting Edgar Etheling, a soft and weak Prince, yet right Heir to the Crown; at length upon Williams declaring that he would confirm the Laws of Saint Edward, he was electus à Clero & Populo, and with
b all

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all the Ceremonies and Solemnities then in use, was Crowned at Westminster, the whole Nation submitting to him. But hear what the Historians of those times say.

*Brevis Relatio
de Will. Rege
a Sylz Taylor
edit. ad finem
Tractat. de
Gavelkind.*

*Willielmus Pi-
flaviensis pag.
204.
Willielmus Pi-
flaviensis quæ
oculis suis vidit
refert. Saith Or-
dexius Vital.
who lived un-
der King Ste-
phen. pag. 504.*

*Londoniam convenientibus
Francis & Anglis (ad Nati-
vitatem Domini) illisq; om-
nibus concedentibus Coro-
nam totius Anglia & Do-
minationem suscepit. Die
ordinationi decreto locutus
ad Anglos condecienti sermo-
ne Eborac. Archiepiscopus
sapiens, bonus, eloquens, an-
consentirent eum sibi Domi-
num coronari inquisivit, Pro-
testati sunt hilarem consen-
sum*

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sum universi minime hæsi-
tantes, ac si coelitus unâ men-
te datâ unâq; voce *Anglorum*
voluntati quam facillime
Normanni consonuerunt ser-
mocinato apud eos ac senten-
tiam percunctato à Con-
stantini Præsule, sic *electum*
consecravit Archiepiscopus,
imposuit ei Diadema ipsumq;
regio folio, &c.

Ante Altare S. *Petri* A-
postoli coram Clero & Po-
pulo jurejurando promittens
se velle Sanctas Dei Ecclesias
& Rectores illarum defende-
re necnon & cunctum Popu-
lum sibi subjectum *juste* &
regali providentia regere, re-

Hoveden pars
prior pag. 258.
l. 13.

b 2

clam

all the Ceremonies and Solemnities then in use, was Crowned at Westminster, the whole Nation submitting to him. But hear what the Historians of those times say.

*Brevis Relatio
de Will. Rege
a Sylva Taylor
edit. ad finem
Tractat. de
Gavelkind.*

*Willielmus Pi-
lavienfis pag.
204.
Willielmus Pi-
lavienfis quæ
oculis suis vidit
refert. fith Or-
dericus Vital.
who lived un-
der King Ste-
phen. pag. 504.*

Londoniam convenientibus Francis & Anglis (ad Nativitatem Domini) illisq; omnibus concedentibus Coronam totius Angliæ & Dominationem suscepit. Die ordinationi decreto locutus ad Anglos condecienti sermone Eborac. Archiepiscopus sapiens, bonus, eloquens, an consentirent eum sibi Dominum coronari inquisivit, Protestati sunt hilarem consensum

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31

sum universi minime hæsi-
tantes, ac si coelitus unâ men-
te datâ unâq; voce *Anglorum*
voluntati quam facillime
Normanni consonuerunt ser-
mocinato apud eos ac senten-
tiam percunctato à Con-
stantini Præsule, sic *electum*
consecravit Archiepiscopus,
imposuit ei Diadema ipsumq;
regio folio, &c.

Ante Altare S. Petri A-
postoli coram Clero & Po-
pulo iurejurando promittens
se velle Sanctas Dei Ecclesias
& Rectores illarum defende-
re necnon & cunctum Popu-
lum sibi subiectum *iuste* &
regali providentia regere, re-

*Hovden pars
prior pag. 258.
l. 13.*

b 2

Etiam

Malmesb. de
Gest. Pontif.
pag. 154. b.

*Etiam legem statuere & tenere,
rapinas injustaq; judicia pe-
nitus interdicere. Exacto
prius coram omni populo
jurejurando quod se modeste
erga subditos ageret & æquo
jure Anglos & Francos tra-
ctaret.*

*Pursuant to all which, and
to fix himself more sure in
that his new-got Chair of
Soveraignty, he by his Magna
Charta, or Great Charter,
grants and confirms the Laws
of Edward the Confessor.*

Spem. Concil.
Tom. 2. pag.
341, 342.
Guilielmus Pi-
ctaviensis saith,
Pag. 208. nulli
Gallo datum
quod Anglo
cuiquam inju-
ste fuerit abla-
tum.

*Willielmus etiam Rex cui
Sanctus Edwardus Regnum
contulit, leges ipsius Sancti
servandas esse concessit, saith*

Sir

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Sir Henry Spelman. *But now we will set down a branch of the Charter, which runs thus.*

*Seldeni ad Ead-
merum Spice-
leg. pag. 190.*

Volumus etiam ac firmiter
præcipimus & concedimus ut
omnes *liberi homines* totius
Monarchiæ Regni nostri præ-
dicti *habeant & teneant ter-
ras suas & possessiones suas
bene & in pace, libere ab
omni exactione injusta & ab
omni Tallagio.* Ita quod
nihil ab eis *exigatur* vel ca-
piatur nisi *servitium* suum
liberum quod *de jure* nobis
facere debent & facere tenen-
tur & prout statutum est eis
& illis à nobis datum &
concessum jure hæreditario im-

Nota.

*Then not by
Conquest.*

b 3

perpe-

perpetuum per Commune Concilium totius Regni nostri prædicti.

Mr. Davis p. 255, 257.

From all which it must necessarily be granted, 1. That this Statute or Law, was made per Commune Concilium totius Regni. 2. The Magna Charta of W. 1. H. 1. King Stephen, H. 2. and King John (the last of which sayes, Nullum scutagium vel Auxilium ponam in Regno nostro nisi per Commune Consilium Regni nostri, the same in substance with the Great Charter of William I.) was but a restitution and declaration of the antient Common

mon Law and right of the Kingdom, and no Law introduced de novo, or forced upon King John at Runningmead, to the disinberison of the Crown, and which by their severall sacred Coronation Oaths they had so solemnly sworn inviolably to observe and keep.

Magna Charta quæ ex parte maxima leges antiquas & regni consuetudines continet, saith *Mat. Paris* who was Historiographer Royal to H. 3. lived in the time of King John, and therefore could not be ignorant, that *Magna Charta* was but the ancient Laws reduced under particular heads.

'Tis true indeed King William the First gave away the Estates of severall of those who were in Arms against him, to his Adventurers and followers, but the rest of the English (as well by his Coronation Oath, as by a solemn ratification of St. Edwards

b 4 Laws

Seldens Titles
of Honor, pag.
580.

idem pag 523.

Mat. Paris in
vita Sancti Al-
bani Abbatum,
pag. 43.

Laws in a Parliament in his fourth year) were to enjoy their Estates and the benefit of those Laws; but that being not done in the general, and the English (who declared à majoribus didicisse aut libertatem aut mortem) being oppressed by the King and Normans, begun to be very uneasy under his Government, so that things were brought to that pass, that he vehemently feared, ne totum Regnum turpiter amitteret etiam trucidatus; to obviate which mischiefs in the seventh year of his Reign, (for so I take it,) by the policy of Lanfrank Arch-

Archbishop of Canterbury,
 serena facie vocavit eos, *i. e.*
the English, ad pacem sed
 subdolan, *who meeting at*
 Berkhamsted, post multos
 disceptationes, *both parties*
came to a second compact, and
the King to give them satis-
faction, reiterated his Coro-
nation Oath, and swore upon
the Holy Evangelists and Re-
liques of St. Alban, bonas
 & approbatas antiquas Reg-
 ni leges quas sancti & pii *An-*
glie Reges ejus Antecessores
 & maxime Rex *Edwardus*
 statuit, inviolabiliter obser-
 vare, & sic pacificati ad pro-
 pria læti recesserunt. Rex
 autem

Mat. Paris in
vita Friderici
Abbatis, fol. 48.
 l. 39.

Hoveden pars
prior pag. 260.

Mat. Paris in
vita S. Albani
Abbatum, pag.
48.

autem caute propositum su-
um pallians, *perswaded many
of the principal of the Nobility
and Gentry to attend him into
Normandy, where Civita-
tem quæ Cynomannis, &
Provinciam ad illam perti-
nentem maximo Anglorum
auxilio quos de Anglia se-
cum adduxerat, sibi subjuga-
vit, the rest that remained
here, he suddenly set upon
apart, which he durst not
attempt when united, multos
eorum trucidando, exhæ-
redando & quamplures
proscribendo, leges violans
memoratas, & spoliatis An-
glis pro libitu ac sine iudicio
Curiali*

Curiali depauperatis suos
Normannos in suorum homi-
num *Anglorum* * natalium * Naturalium.
qui ipsum sponte sublimave-
runt, provocationem, locuple-
tavit. So that after this time,
'tis plain, he bore a heavy
band upon the English, and
increased his severity to acts
of high injustice and barba-
rous cruelty, and so gave occa-
sion to Historians in future
Ages, to say, that when he
came in, he totally subdued
and crushed the Nation, Nobi-
lity, and Gentry. Yet notwith-
standing the great power he
took, we meet with some ge-
neral Councils or Parliaments
in

in his Reign, whereby it appears, that the Freemen or Commons of England, were there, and had a share in making of Laws; for what could the promised restitution of the Laws of Edward the Confessor signifie, if their Witenagemot, or Parliament, the Augustissimum Anglicarum libertatum Asylum & sacra Anchora, was destroyed and broken?

For one of the fundamental and principal ends of Parliaments, was for the redress of Grievances, and easing the Oppressions of the People. The Mirror of Justices, an antient
and

and learned Treatise of the Law, saith, that Parliaments were instituted, pur oyer & terminer les plaintes de tort de le Roy, de la Roigne & de leur Infans, & de eux specialment de queux Torts lun ne poet aver autrement common droit, To bear and determine the Complaints of the wrongful Acts of the King, the Queen, and their Children, and especially of those persons against whom the subject otherwise could not have common justice.

And Knighton (one of our best Historians) writes,
Quod ex antiquo Statuto & Consue-

*De Eventibus
 Angliæ Lib. 5.
 fol. 2681. Col.
 1, 2.*

The Preface.

Consuetudine laudabili & approbata, &c. *That by an antient Statute and Custom, laudable and approved, which no man could deny; the King was once in the year to convene his Lords and Commons to his Court of Parliament, as to the highest Court of the whole Realm.* In qua omnis Aequitas relucere deberet absq; qualibet scrupulositate vel nota, tanquam sol in ascensu meridiei, ubi pauperes & divites pro Refrigerio tranquillitatis & pacis & Repulsionem injuriarum refugium infallibile quærere possent, ac etiam errata Regni reformare &

& de statu & gubernatione
Regis & Regni cum sapien-
tiori Concilio tractare; ut
Inimici Regis & Regni in-
trinseci & Hostes extrinseci
destruantur & repellantur,
qualiter quoq; onera incum-
bentia Regi & Regno levi-
us ad Ediam Communitatis
supportari poterunt. In

*which Court all Equity
ought to shine forth without
the least Cloud or Shadow,
like the Sun in its meridian
glory; where poor and rich
refreshed with peace and ease
of their oppressions, may al-
ways find infallible and sure
refuge and succour, the grie-
vances*

vances of the Kingdom redrest, and the state of the King and Government of the Realm debated with wiser Councils, the Domestick and Foreign Enemies of the King and Kingdom destroy'd and repell'd, and to consider how the Charges and Burthens of both may be sustained with more ease to the people. But to return.

An. D. 1070. which was in the third and fourth year of William the I. at a General Council, or Parliament, Lanfranc was chosen Archbishop of Canterbury, Eligentibus eum senioribus ejusdem Ecclesiæ

*Gervaf Dorob.
Act. Pont. Can-
tuar. p. 1653.
l. 5.*

clesiæ cum Episcopis ac Principibus *Clero & Populo Angliæ* in Curia Regis in Assumptione Sanctæ Mariæ.

Another Author relates it thus. Rex mittens propter

illum in *Normanniam* fecit

eum venire in *Angliam*; cui

consensu & consilio omnium

Baronum suorum omniumq;

Episcoporum & Abbatum

totinsq; *Populi Angliæ* com-

misit ei *Dorobernensem* Ec-

clesiam.

Relat. willielmi primi ad finem tractat. de Gavelkind à Syl. Taylor, pag. 194.

Anno 1072. *The King*

summoned a General Council,

or Parliament, at Pinneden

in Kent, to examine and de-

termine the great cause be-

c tween

Seldens Tir. of Honor, pag. 580.

tween Lanfranc Archbishop of Canterbury, and Odo Bishop of Bayeux, Earl of Kent, because the first, libertatem Ecclesiæ Cantuariensis invaserat, yet Judgment went for the Archbishop, which Mr. Selden sayes, was confirmed totius Regni assensu, or as Eadmerus, stipulatione totius Regni.

Ex Cartulario
Cœnobii West-
monasteriensis
in Bibliotheca
Cotton. sub Effi-
gie Fausline,
A. 3.

In the fourteenth Year of this King, at a General Council, or Parliament, held at Westminster, the King by his Charter confirmed the Liberties of that Church after he had subscribed his own name, with the sign of the Cross,

Cross, adding many of the great Clergy and Temporal Nobility, instead of, Cum multis aliis, bath these words, multis præterea illustrissimis virorum personis & Regum Principibus *diversi Ordinis* omissis qui similiter huic confirmationi piissimo affectu testes & fautores fuerunt. Hii autem illo tempore à Regia potestate diversis *Provinciis* & *Urbibus* ad universalem *Synodum* pro causis cujusbet Christianæ Ecclesiæ audiendis & tractandis ad præscriptum celeberrimum *Synodum* quod *Westmonasterium* dicitur, convocati, &c. In

Provincia, i. e. Comitatus, *Selden* Tit. of Honor, pag. 273. *Spelm.* Gloss. Tit. *Provincia*, pag. 471. *Parliamentum Synodus magna* nuncupatur, *Somneri* Gloss.

the margine of the Book I find writ this note, Nota hic hos omnes convocari à Rege sua auctoritate ad causas Religio- nis tractandas tam Nobiles de Clero quam Principes Regni cum aliis inferioris gradus, Conventio quorum videtur esse Parliamentum.

21 E. 3. fol. 60.

And in the Year-Book of E. 3. above 330. years since, in a Case touching the exemption of the Abbey of Bury from the Bishops of Norwich, we have mention of a Parliament held, en temps de W. Conqueror à son Parlement.

King

King *William* the Second.

King *William the First* being dead, William his second Son, then living, succeeded him in the Kingdom; who designing to prevent his elder Brother Robert of the Crown, finding Lanfranc Archbishop of Canterbury not altogether consenting with him therein, to the compleating his desire, and fearing lest the delay of his Consecration might prejudice his desired honor, he begun by giving large gifts and rewards to the people, and as well by himself as

*Edmeus in
vita W. 2. fol.
13. l. 5. An.
Dom. 1187.*

all others whom he could engage ; fide sacramentoq; Lanfranco promittere, by his Faith and Oath to promise unto Lanfranc, Si Rex foret Justitiam, æquitatem & misericordiam se per totum Regnum in omni negotio servaturum, he would in all actions observe and keep Justice, Equity, and Mercy, through the whole Kingdom ; that he would defend the Peace, Liberty, and safety of the Church, against all men, and also, that he would in and through all things obey the Precepts and Counsels of the Arch-Prelate ; thereupon, in Regem

gem eligitur & consecra-
tur.

But not long after Odo Hoveden pars
prior pag. 264.
*Bishop of Baiox, Earl of
Kent, Geffrey Bishop of
Constance, Robert Earl of
Morton, Roger Earl of
Shrewsbury, and the greatest
part of all the Norman Pre-
lates and Nobility in England,
entred into a Conspiracy to
make Robert King, and to
deliver King William to his
Brother alive or dead; and
thereupon they took Arms: the
King hearing these things, and
foreseeing his inevitable ruine
if the English power did not
preserve him, caused the Eng-
lish*

lish to be assembled together, and shewed them the Treason of the Normans, and intreats and begs them to help and defend him, upon this condition, that if they would be faithful to him in that his necessity and distress, he would grant them better Laws which they should chuse, and would forbid or interdict all unjust Scotts, Taxes, or Tallages, and grant to all persons their Woods and Hunting. Upon which assurance and promise the English did faithfully assist him, and by their power valiantly overthrew the Normans, and preserved and fixed the Crown upon Williams

ams head. But whatsoever he
promised he kept but a short
time, the words of the Author
are. His auditis Rex fecit Lin. 40. b.

congregari Anglos & osten-
dit eis traditionem Normanno-
rum & rogavit ut sibi auxilio
essent, eo tenore ut si in hac
necessitate sibi fideles existe-
rent, meliorem legem quam
vellent eligere eis concederet,
& omnem injustum Scottum
interdixit, & concessit omni-
bus sylvas suas & venatio-
nem. Sed quicquid promisit,
parvo tempore custodivit.
*Angli tunc fideliter eum ju-
vabant **

* It seems the
English were
then consider-
able, and not
totally ruined
by it. 1.

*'Tis therefore evident from
hence,*

hence, that William the Second did not claim the Crown jure gladii, by the power of the Sword, nor did he affirm, that he had a despotical right to make or change Laws, ad libitum suum sine assensu Regni or Parliament. And 'tis a great observation to me, that from the pretended Conquest to this day, I never read of any King of England that declared and publickly owned any such prerogative or right, but only that miserable and unfortunate Prince Richard the Second, which the Parliament Roll thus expresseth. Item, Idem Rex nolens justas leges &

& consuetudines Regni sui
servare seu protegere, sed se-
cundum suæ arbitrium vo-
luntatis facere quicquid desi-
deriis eius occurreret, quan-
doq; & frequentius quando
sibi expositæ & declaratæ
fuerant leges regni sui per *Ju-*
sticiarios & alios de *Concilio*
suo & secundum leges illas
petentibus justitiam exhibe-
ret, dixit expresse vultu au-
stero & protervo quod leges
suæ erant in ore suo & ali-
quotiens in pectore suo, & quod
ipse solus possit mutare & con-
dere leges regni sui; & opi-
nione illa seductus quamplu-
ribus de ligeis suis justitiam
fieri

fieri non permisit, sed per minas & terrores quamplures à prosecutione communis iustitiæ cessare coegit.

But far different were the sentiments and Judgment of his Grandfather Great Edward the third, who tells us : Because, that by divers Complaints made to us, we have perceived that the Law of the Land, which we by our Oath are bound to maintain, is the less well kept, and the Execution of the same disturbed many times by maintenance and procurement, as well in the Court as in the Country; We greatly moved of

*Pultons Stat. 20
E. 3. fol. 137.*

of Conscience in this matter, and for this cause desiring as much for the pleasure of God, and ease and quietness of our Subjects, as to our Conscience, and for to save and keep our said Oath, We have ordained, &c.

And wise King James King James's first Speech to his first Parliament in England. Pulton Stat. 1 Jacobi, cap. 2. fol. 1157.
saith, That not only the Royal Prerogative, but the Peoples security of Lands, Livings, and Priviledges, were preserved and maintained by the antient fundamental Laws, Priviledges, and Customs of this Realm, and that by the abolishing or altering of them, it was impossible

possible but that present confusion will fall upon the whole state and frame of this Kingdom.

King Charles
the First's De-
claration to all
his loving Sub-
jects, published
with the ad-
vice of his
Privy Council.
*Exact Collec-
tions of Declara-
tions, pag. 28,
29.*

*And his late Majesty of
ever blessed memory, was of
the same mind and opinion,
when he said, The Law is
the Inheritance of every Sub-
ject, and the only security he
can have for his Life, or E-
state, and the which being
neglected or disesteemed (un-
der what specious shew so-
ever) a great measure of in-
felicity, if not an irrepara-
ble confusion, must without
doubt fall upon them.*

Henry

Henry the First.

After the Death of King William, the Magnates Angliæ, not knowing what was become of Robert Duke of Normandy, Eldest Brother of the deceased King (the said Duke having been absent for five years in a Voyage to the Holy Land) were afraid to be long without a King, which Henricus fratrum ultimus & juvenis sapientissimus cum callide cognovisset, congregato Londoniis Clero

Mat. Par. A. D. 1100. pag. 55. l. 20.

Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alta notabilis persona transeat ad partes transmarinas. Rot. Claus. 3 E. 2. m. 16. dorso.

Sic igitur isto modo Willielmo mortuo Robertus frater ejus in Normannia contra inimicos sibi infestos in guerra sua occupatus est, in eodem tempore iste Robertus semper contrarius & adeo innaturalis existerat Baronibus Regni An-

glia quod plenario consensu & consilio totius Communitatis Regni imposuerunt ei illegitimitatem quod non fuerat procreatus de legitimo Thoro Willielmi Conquestoris, unde unanimi assensu suo ipsum recusarunt & pro Rege omnino recusaverunt & Henricum fratrem in Regem elegerunt.

Henr. de Knighton, Coll. 2374. Cap. 8. l. 14.

Angliæ

Angliæ & Populo universo promisit emendationem legum quibus oppressa fuit *Anglia* tempore patris sui & fratris nuper defuncti, ut animos omnium in sui promotionem accenderet & amorem, ut illum in Regem susciperent & patronum; to which it was generally answered, That if he with a willing mind would grant, and by his Charter confirm to them, illas libertates & consuetudines antiquas, which their Ancestors enjoyed in the time of Edward the Confessor, in ipsum consentirent & in Regem unanimiter consecrarent.

Henry

Henry willingly granted this, and taking an Oath, that he would perform it, consecratus est in Regem, at Westm. upon Lady day, favente Clero & populo, and so forthwith he was Crowned by Maurice Bishop of London and Thomas Archbishop of York. After such his Coronation, he granted and confirmed to the Nation, for the advancement of Holy Church, and preservation of the peace of his people, a Charter of their antient Liberties.

The Charter the Reader may find in that industrious Revisor, and Restorer of decayed

LL. Gulielmi
primi, Lamb.
fol. 175, 176.
Hæc etiam
Carta habetur
apud Mat. Pa-
ris. An. Dom.
1118, and
1213.

cayed and forgotten Antiquities, Mr. Lambard, as also in Matth. Paris. Where it appears, that the Archbishops, Bishops, Barons, Earls, Vicounts, or Sheriffs, & Optimates totius Regni Angliæ, were Witnesses to the Charter.

Carta moderati-
onis feodi
magni sigilli
Anno 1^o Jo-
hannis. Exve-
teri Registro
in Archivis.
Cantuar. Ar-
chiepiscopi.
Rot. Pat. 1 H.
3. m. 12. Coke
2. Instit. fol.
79. Rastals
Stat. 1 E. 3.

And that at the Coronation of the King, those Laws were made, de Communi Consilio & assensu Baronum Regni Angliæ, by the common advice and assent of the Barons of England. It being usual in succeeding ages, at the Coronations of our English Kings, to confirm, make, and ordain Laws, De assensu Baronum Regni,

Regni, per Commune Concilium Regni, or Parliament.

I shall from hence observe two things.

1. *That these Laws were granted and confirmed, assensu Baronum Regni, or Baronagii Angliæ, there being a clear difference between Barones Regis, and Barones Regni, as appears in the very bowels of those Laws and elsewhere ; for the K. saith, Si quis Baronum nostrorum, &c. but who were comprehended under those first phrases, Mr. Camden will tell us, Nomine Baronagii Angliæ omnes quodammodo Regni ordines continentur,*

LL. Gulielmi
primi Lamb.
fol. 175, 176.

Camd. Britan.
in 8°. De or-
din. Angliæ,
fol. 61.

tur, *and so the Commons as we now call them, were there and assented to those Laws.*

2. Clero & Populo universo Angliæ congregatis. *We read King Stephen assensu*

Will. Malmesb. Hystor. Novell, lib. 1. pag. 101. l. 15. b.

Hoveden pars posterior, pag. 282. l. 13.

MS. vita Thomæ Archiepiscopi Cant. in Bibl. Cotton.

Cleri & Populi in Regem Angliæ electus, & per Dominum Papam confirmatus, 10 H. 2.

Congregato Clero & Populo Regni, or as Fitz-Stephens, Generali Concilio, the King made the Assise or Statute of Clarendon, which Council

Selden's Titles of Honor, fol. 585.

Carta moderationis feodi magni sigilli.

the learned Selden calls a full Parliament. King John was Crowned mediante tam Cleri quam Populi unanimi consensu & favore. Anno 50 H.

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H. 3. Per providentiam Cardinalis, *meaning the Popes Legate*, apud Kenilworth Clerus & Populus convocantur, *which the Patent Roll of that year thus confirms.*

*Mat. Westm.
pag. 397. l. 57.*

The King a le request de honourable pier Sire Ottobon Legat d' Engleterre son Parlement eust sommons à Kenilworth; *where the Statute or Dictum de Kenilworth, was made between the King and his Communante, or Parlement.* Rex primo, postmodum Clerus & Populus juraverunt quod Dictum inviolabiliter observarent. *Thus have I at length, I hope, fully*

*Rot. Pat. 50 H.
3. m. 3. dorso:
Rastallis Stat.
pag. 12.*

*Mat. Westm. fol.
393. l. 1.*

d 3

ascr.

ascertained and explained the
Historians phrase, Clerus &
Populus, and proved it to be
a Parliament from the Pat.
Roll of H. 3.

Yet I do not think that the
Lords Temporal only were
the Populus, nor the Lords
Spiritual the Clerus; for I
agree with Dr. Heylyn, that
there is no Record, either of
History or Law (which I have
observed) in which the word
Clerus serves to signifie the
Archbishops, and Bishops,
exclusive of the other Clergy,
or any writing whatsoever,
wherein it doth not either sig-
nifie the whole Clergy gene-
rally,

Dr Heylyn
stumbling
Block, pag.
189.

rally; or the inferior Clergy only, exclusive of the Archbishops, Bishops, and other Prelates; and 'tis my opinion as far as I can find, that the word Populus following Clerus, was, Thema universale in significando, and comprehended as well the Commons as the Lords, and indeed the subject matter of the Historians speaks it. William the Second, Henry the First, King Stephen, and King John, were to be elected and created Kings of England, having no hereditary right, 'twas but reasonable then, and according to the Laws and precedents of

d 4 other

other Countries in like Cases,
Quod omnes tangit ab om-
nibus approbari debet, and
so was the solemn Resolution
of both Lords and Commons
in the Parliament, 40 E. 3.
That neither King John, nor
any other, could put the Realm
or people of England into sub-
jection, sanz assent de eux,
without their assent, or as
the Parliament 29 H. 3. de-
clared, sine assensu Regni, or
as Malmesbury says, in vita
Willielmi primi, absq; gene-
rali Senatus & Populi con-
ventu & Edicto.

Rot. Parl. 40
E. 3. n. 78.

Mat. westm.
An. 1245. p.
191, 197.

Malmesb. lib.
3. pag. 56.

But now to close the Reign
of Henry the first, I will out
of

of that excellent Historian Matthew Paris transcribe the *Oratio Regis Henrici ad Anglos.* Oration, or Speech of that King to the Common Council or Parliament, in the seventh year of his Reign, his elder Brother Robert Duke of Normandy, then claiming the Crown of England, and ready to invade this Nation with a great Force; the Speech of the King, the learned Monk thus delivers to us.

Magnatibus igitur Regni ob hoc Londoniam Edicto Regio convocatis Rex talibus alloquiis mel & favum oleumq; mellitis & molitis blandiens dixit: *Amici & fideles mei indigenæ ac naturales, nostis veraci*

Mat. Paris in vita H. I. pag. 62, 63. Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia Notabilis persona transcat ad partes transmarinas. Rot. Claus. 3. E. 2. m. 16. dorso.

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veraci fama referente, qualiter frater meus Robertus electus & per Deum vocatus ad regnum Hierosolymitanum feliciter gubernandum, & quam frontosè illud infelicitè refutaverit, merito propterea à Deo reprobandus. Nostis etiam in multis aliis superbiam & ferocitatem illius; quia vir bellicosus, pacis impatiens est, vosque scienter quasi contemptibiles & quos desides vocat & glutones conculcare desiderat. Ego vero Rex humilis & pacificus vos in pace in antiquis vestris libertatibus, prout crebrius iurejurando promisi, gestio confovere, & vestris inclinando consiliis consultius ac mitius more mansueti principis sapienter gubernare, & super his (si provideritis) scripta subarata roborate & iteratis iuramentis prædicta certissime confirmare, omnia videlicet quæ sanctus Rex Edwardus Deo inspirante providè sancivit

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*civit iniolabiliter jubeo observari, ut
mecum fideliter stantes fratris mei
immo & mei & totius Regni An-
glie hostis cruentissimi injurias po-
tenter, animose ac voluntarie pro-
pulsatis. Si enim fortitudine Anglo-
rum roborer, inanes Normannorum
minas nequaquam censeo formidandas.
Talibus igitur promissis, que ta-
men in fine impudenter violavit, omni-
um corda sibi inclinavit, ut pro
ipso contra quemlibet usq; ad ca-
pitis expositionem dimicarent.*

*This Speech to me is another
strong Confirmation and Argument
against the Norman Conquest, for
tis luce clarius, 1. That King
Henry the First did not pretend to
hold the Crown Jure Victoris. 2.
That the English were not totally sub-
dued and destroyed by his Father Wil-
liam the first. 3. That the Son
(as*

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(as well as the Father) had several times solemnly sworn to the inviolable observance of the Laws of St. Edward or of the Saxon Government. 4. King Henry does not depend on the Normans that came in with his Father, no, it was upon the English Common Council, or Parliament; nor did he call them Vassels and Slaves, but *Amici & Fideles mei naturales*, in them he fixt his only hope and assurance, both for their Fidelity and Courage, and believed that they would (as indeed they did) preserve and defend his Crown and Life against the great Power and Policy of his and the Kingdoms most bloody Enemies, who were ready to Invade both with a mighty Army; it being then Prudentially and Politickly resolved unanimously in Parliament, not to permit, or suffer the Duke to land here, but to fight him in his own Country, which the English

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lish then did (forty years after the coming in of William the first) and at one Battle not only totally conquered and overthrew the Normans, but took Robert their Duke Prisoner, and thereby put a period to the dangers and fears of King Henry the first, and in despite of the French Power, set the Ducal Crown of Normandy upon the head of King Henry an English-man: and after Robert had remained for some time in Prison, at last to conclude the Catastrophe of his unhappy life, he had his eyes burnt out of his head, and so by a sad fate left all to the English King.

From all which Authorities and Reasons, under correction, it is sufficiently evidenced, that in the Brittish, Saxon, and Norman Governments, the Commons (as we now phrase them,) had Votes, and a Share in the making and en-
acting

The Preface.

acting of Laws for the Government of the Kingdom, and that they were an essential part of the Commune Concilium Regni, Wittena Gemot, or Parliament, before and after the supposed Conquest by King William the First.

Having thus concluded my Preface, I shall now diligently apply my self to discuss that grand point touching the introduction of the Commons into our great Council, or Parliament, as represented by the Knights, Citizens, and Burgesses, being indeed the principal work I intended, and was finished before this Preface; the difficulty of which cannot be well judged of but by those who have undertaken subjects of like intricacy; for I have at a great charge, and expence of time, and without any mans assistance or help, out of the dark and
neg=

The Preface.

75

neglected paths of Antiquity, endeavoured to make truth publick and general, and (with submission) I hope it will appear, that I have rescued from the force and power of a dangerous growing error, the just and ancient rights and priviledges of our Ancestors, in a matter of the highest moment and concern, which is impartially debated in the ensuing Discourse; a subject, whereof (to the best of my knowledge) no Author hitherto hath so particularly treated.

A

A
DISCOURSE

*Wherein is proved, That the
Commons of England were an
essential part of the Parliament
before the 49th of Hen. 3.*

SEveral great and learned Authors of our Age having in their works and writings frequently published, and asserted to the world this Position as an unquestionable truth,

That the Commons in Parliament (as distinguished from the Lords) compounded of Knights, Citizens, and Burgeses, had their first birth and beginning by Rebellion, An. 49 H. 3. and that too af-

B

ter

ter the Battle of Lewes, when the Barons had the King and Prince in their power as Prisoners, and exercised Regal Authority in his name :

The consideration and consequents thereof raised in my mind a great desire seriously and impartially to enquire into so important a point of Antiquity ; and the better to satisfy both my own judgment, and the judgments of some of my Friends, I have run over many Records, and Historians, both Ancient and Modern, in Print and Manuscript, but cannot find any authority or reason to give a colour to so harsh an assertion.

I shall therefore, under an humble submission to so eminent Antiquaries, endeavour to disprove this notion of 49 H. 3. by these following Arguments.

1. From

1. From the Claim and Prescription of the Borough of *S^t Albans* in the Parliament of 8 *E.* 2. to send two Burgesses to all Parliaments, *sicut ceteri Burgenses Regni totis retroactis temporibus*, in the times of *E.* 1. and his Progenitors; if so, then in the time of King *John* Grandfather to *E.* 1. and so before *H.* 3.
2. From Records *An^o 15^o Johannis Regis*, wherein the Citizens and Burgesses (not so numerous then as after, and now) together with the Earls, Barons, & *Magnates Angliæ*, were to give *Consilium & Auxilium ad honorem Regis & suum & statum Regni*, who shortly after met at *London*, *Convocatum Parliamentum de tota Clero, & tota secta laicali*, and so within the exprels prescription of the Borough of *St. Albans*.
3. From the solemn resolution

and great judgment of both Lords and Commons in the Parliament of 40 E. 3. against the Pope, That if King *John* had *An^o 14^o* of his Reign (which was three years before the granting of his *Magna Charta*) made the Kingdom tributary to the Pope, he had done it *sanx* *lour* *assent*, which must be understood to be without the consent of the Lords and Commons, and therefore void.

4. From several Records, *inter alia*, de *Annis* 28, 32, 37, 42, 48 *H. 3.* mentioning Parliaments then held, and their proceedings, in some of which the word *Commons* is expressly mentioned, as well as the Prelates, and *Magnates*, to be part of those Parliaments.

5. From an act of Parliament 2 *H. 5.* that famous Prince, where

where it is declared and admitted, that the Commons of the Land were ever a part of the Parliament, and so consequently were part of the Parliaments *Annis* 16, 17 *Johannis*, 28, 32, 37, 42, 48 *H.* 3. all within the prescription of the Borough of *St. Albans*.

6. From the form of penning of Acts of Parliament, and expressions in Records in 49, 51, 54 *H.* 3. when it is granted that the Commons were a part of the Legislative power, which agree with the phrases of Records of Acts of Parliament before that time.

7. From the defect and loss of the Parliament Rolls of *H.* 3. and *E.* 1. and from the universal silence of all Records, and our antient Historians contemporary and succeeding 49 *H.* 3. till our days.

8. From

8. From the various opinions of learned men, in and since *H. 8.* time, who never dreamed of any such origine, nor was ever heard of, till of late.

9. From comparing of the ancient *Generale Concilium*, or Parliament of Ireland, instanced *An^o 38 H. 3.* with ours in England, wherein the Citizens and Burgeses were, which was eleven years before the pretended beginning of the Commons in England.

The FIRST ARGUMENT.

From the claim and prescription of the Borough of St. Albans, in the Parliament of E. 2. to send two Burgeses to all Parliaments, sicut cæteri Burgenſes Regni totis retroactis temporibus, in the times of E. 1. and his Progenitours, if ſo, then in the time of King John Grandfather to E. 1. and ſo before H. 3.

1. **T**HE Burgesſes of St. *Albans* in their Petition to King *E. 2. An^o 8^o* ſay, that they, *sicut cæteri Burgenſes Regni ad Parliamentum Regis* (when it ſhould happen to be ſummoned) *per duos Comburgenſes ſuos venire debeant, prout totis retroactis*

Rot. Parl. 8 E.
2. p. 233. *Pro Burgenſibus de Sancto Albano.*
Who ſent Burgesſes to Parliament 28 E. 1.
35 E. 1. 1 E. 2.
2 E. 2. 5 E. 2.
Pryn's 4. part of Parliamentary Writs,
pag. 900.

B 4^s tempo-

temporibus venire consueverunt, tam tempore domini Ed. nuper regis Angliæ patris regis, as well in the time of E. 1. the Kings Father, & Progenitorum suorum, as in the time of E. 2. semper ante instans Parliamentum, and declared that the names of such Burgeses coming to Parliament were always inrolled in the Rolls of the Chancery; notwithstanding all which the Sheriff of Hartford at the procuration and favour of the Abbot of St. Albans and his Council, refused Burgeses prædictos præmunire, seu nomina eorum retornare prout ad ipsum pertinuit, &c. and therefore they pray remedy.

Those Rolls lost, or destroyed. The Statute of Articuli Cleri made the next year after this Record tells us that there were diversa Parliamentum temporibus Progenitorum suorum Regum Angliæ. Coke 2. Instit. 10. 618.

Respons. est per Concilium.

Respons. Scrutentur Rotuli, &c. de Cancellaria, si temporibus Progenitorum Regis Burgeses prædicti solebant venire vel non? & tunc fiat eis super hoc iustitia vocatis evocandis si necesse fuerit.

I do not think there needs much enforcing

enforcing this Record, since the prescription of sending *duos Comburgenses ad Parliamentum Regis*, sicut ceteri *Burgenses Regni* did, is, that they and their Predecessors were always accustomed to send two Burgesses to Parliament in all former Ages, not only in the time of E. 1. but his Progenitors; therefore in King *Johns* time, his Grandfather at least, and so before H. 3.

And though the answer to the Petition, which in that Age was given in Parliament (*per Concilium*, or all the Judges of *England*, and others the Kings Learned Council) say, *Scrutentur Rotuli, si temporibus progenitorum Regis* (which may go to the whole Reign of King *John*, as before) *Burgenses prædicti solebant venire, vel*

Nota, Rolls of Summons to Parliament, were extant this very Parliament, Rot. Claus. 8 E. 2. m. 25. *Selden's Titles of Honor*, fol. 604, 605.

It appears by the Patent Roll of 26 E. 3. that there were *Parliamenta*, and Summons to Parliament, *temporibus Progenitorum, & ante an-*

num 49 H. 3. Rot. Pat. 26 E. 3. Pars 1. m. 22.

non;

non ; yet that grave and wise Council do not in the least scruple, but clearly admit and confirm the general prescription, that there were Boroughs that sent Burgeses to Parliament, *temporibus E. 1. & Progenitorum suorum*, which goes higher than *H. 3.* his Father ; and it cannot in common reason be supposed, much less believed, that the Burgeses of *S^r Albans*, or the Lawyer or Pen-man of the Petition, should dare to tell the King and Learned Council, in the face of a Parliament, a Novelty so great and ridiculous, and that Recorded to Posterity by the Council, that they and their Predecessors, in the time of *E. 1.* and his Progenitors, had sent two Burgeses to every Parliament, when all the World then knew (if the modern opinion be true) that there was never any Election of any Burgeses to Parliament

liament before the 49 *H. 3.* which was but 50. Years before 8 *E. 2.* and at the time of the Petition fresh in their own memories.

No, surely the Burgeses of *S^t Albans* did not ground their Petition of Right upon a general allegation, or an affirmation *in nubibus*; but the justice and certainty of their claim, as they themselves very well knew, so they prayed it might be examined and tried by uncontrollable Witnesses, *Records*, the *Rolls of Chancery*, The Chancellor and the rest of the Council, did no less know there were such *Rolls*, and therefore order the search; but if the Petition had been notoriously false and idle, instead of recording it to future Ages, they would with contempt and scorn have rejected it, nor would the great Abbot of *S^t Albans*, his Council, and the Sheriff of *Hertford*, against whom the
Petition

Petition was exhibited, have been wanting in their own defence, to have shewed and proved that this antient prescription was a meer *Chimera*, and *fable*; no, they all were well satisfied, that the Borough had sent two *Burgesses* to every Parliament, in the time of *E. 1.* and his *Progenitors*, and therefore it was in vain to oppose or contradict their just and antient right, according to their prescription; all which appears clearly by this, that both before the time of the Petition, and ever since, they have sent *two Burgesses* to every Parliament.

The

The SECOND ARGUMENT.

From Records An. 15 Johannis Regis, wherein the Citizens and Burgesſes, (not ſo numerous then as after, and now, together with the Earls, Barons, & Magnates Angliæ,) were to give Conſilium & Auxilium ad honorem Regis & ſuum & ſtatum Regni, who ſhortly after met at London, Convocatum Parliamentum de toto Clero & tota ſecta laicali, and ſo within the expreſs Preſcription of the Borough of S. Albans.

I Am not ignorant that ſome have dated the origine of the Commons being a part of the Parliament, from the Parliament of *Runningmead*, 17^o Reg. Joh.

It

It may therefore be worth our pains to observe this great Record following, and to consider whether from thence may not be proved this Conclusion :

That the great Cities and Boroughs of the Kingdom (not so numerous then as after and now) in the 16^o of King *John*, before the granting of his *Magna Charta*, or rather confirming the antient Laws in his 17th year, at *Runningmead*, did send their Proxies and Representatives, to the *Commune Concilium Regni*; or Parliament; for it cannot be supposed in reason, that every individual Citizen and Burghers could come, no more than every Parson of a Parish to a Convocation, or to a meeting of the whole Clergy of *England*.

The Record saith, That the King being in *partibus transmarinis*, writes

Majori

Majori & Baronibus London.

Majori & probis hominibus

Winton. Exon.

Northampt. Worcestre.

Lincoln. Cantebr.

Ebor, Hunt.

Oxon. Bristol.

Glouc. Norwich.

Heref.

And all the great Boroughs of the *Demefnes* of the King, giving them account of his proceedings and successes in his War against the French, and that the Pope had by his Letters released the *Interdict*, under which the Kingdom then lay, which the King had then sent to Peter Bishop of Winton, Chief Justice of *England*; and therefore desired that they would believe what the Bishop should speak to them, that *Consilium & Auxilium*

In the ancient Subsidy Rolls we often meet with the Tenants in ancient Demefne in Parliament, and giving Subsidies, and it is the opinion of my Lord Hobart, fol. 48. that by continuance of time they were discontinued, and it may be one reason thereof was, that it was an ease granted them by

the King in favour of their labour of the Earth. *Vide* Rot. de 20. & 15 Ed. 2. apud Northampton, An. Regni sui primo à Laicis concessis. Rot. de 15. Burgorum Regi E. 2. an. Regni sui nono apud Lincoln. à Laicis concessa. In Custodia Clerici Pipæ in Scaccario remanen.

vestrum

*vestrum ad honorem nostrum & vestrum
& statum Regni nostri in melius com-
municandum efficaciter super hoc appona-
tis, and that majori festinatione expedi-
retur, Teste apud Rupellam 6^o die
Martii.*

Rot. Pat. 15
Joh. Pars 2.
m. 1.

*Inhibitio ne qui
Magnates, viz.
Comes, Baro,
Miles, seu ali-
qua alia nota-
bilis persona
transseat ad par-
tes transmarini-
nas. Rot. Claus.
3 E. 2. m. 19.
dorso.*

In the same manner he writ to
William Earl Marshal, and to all
the Earls, Barons, & Magnatibus
Anglie, &c. Teste apud Rupellam
8^o die Martii.

In order therefore to our proof
of a Parliament from these Re-
cords, let us make two observati-
ons.

1. Negative.
2. Affirmative.

1. Negative.

Though the Writ be general,
and mentions not any time or
place for meeting or coming to
Parliament, or the great Council
(the King referring that I suppose
to his Regent or Chief Justice here)
yet it cannot be intended that Peter
Bishop

The Commons of England, &c.

17.

Bishop of *Winchester*, being then Chief Justice of *England*, should go from County to County, City to City, Borough to Borough, or as our Church-Wardens do, from House to House, *rogare Consilium & auxilium* (the proper business of a Parliament) to desire and entreat for their *Counsel* and *Aid*, for the Honour of the King, their own, & *statum Regni*, and the safety of the whole Kingdom; surely that had been an imployment fitter for the wandering Jew, or *Johannes de Temporibus*; and such counsel must needs have been of a very different and various nature, and both agreeing very ill with the words *majori festinatione*, and urgency of the contents of the Writs.

Let us then enquire what were the effects and consequents of these Writs, and that brings me to the second observation.

C

King

2. Affirma-
tive.

King John began his Reign 6^o Aprilis, the Writs bear date 6^o & 8^o Martii, which was the Close of An. 15^o. It may be the Winds were very cross, or for some other reason the Letters might not so speedily be brought over, or published here, or after the summons there might be above forty days before they met. But sure it is, in the beginning of July, (after that March) being the sixteenth Year of his Reign, we find:

Mat. Paris An.
1214. pag.
249. l. 27.

Nicholaus Tusculanensis Episcopus & Apostolicæ sedis Legatus per nuntios memoratos Domini Papæ Authenticum acceperat. Rex Anglorum erat in partibus transmarinis, sed quoniam idem Rex in recessu suo ab Anglia Legato jam dicto & Willielmo Marefcallo vices suas in hac negotio commiserat, idem Legatus in urbe Londinensi apud Sanctum Paulum grande congregavit Concilium, ubi congregatis Archiepiscopis,

an Essential part of Parliament. 19

chiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, & aliis ad hoc negotium Interdicti (the very business of the Writs) spectantibus proposuit coram omnibus formam restitutionis.

Paucis evolutis diebus congregantur apud Londoniam Archiepiscopi, Episcopi, Abbates, multarumq; Ecclesiarum Prælati cum Comitibus & Baronibus totius

Regni ut negotia Regni & Ecclesie pertractarent cum Theobaldo Cantuar. Archiepiscopo Apostolice sedis Legato, eidem Concilio presidente. Mat. Paris in vita Rob. Abb. S. Albani An. Dom. 1155. pag. 72. l. 25.

And the Great Selden the Honour of the Inner-Temple, or rather as the Learned Grotius, Honos Britannie, to drive the nail home, saith, But we know by what is already shewed, that divers former Parliaments were in this Kings time (meaning before the granting of his Magna Charta, An. 17 Joh.) though the Laws made in them be lost. And in the year before the Charter also (which was An. 16 Joh.) the Author of Eulogium sayes, that Convocatum est Parliamentum Londoniis presidente Archiepiscopo cum toto Clero & tota secta laicali, wherein per Domini Papæ præceptum

Selden's Titles of Honour, Part 2. fol. 587.

The Commons of England ever.

illa obligatio quam Rex Domino Papæ fecerat cum fidelitate & homagio relaxatur omnino, vii^o die Julii.

Having thus proved a Parliament in the 16th of King John, and that the Citizens and Burgeses had their Summons to it, which is remarkable by a Writ particular and distinct from that of the Lords, viz. the Earls, Barons, & Magnates Angliæ, I will conclude this Argument with the Statute of 5 R. 2. Cap. 4. where it is enacted by the assent of the Prelates, Lords and Commons, That all and singular persons and Communalities, (be he Archbishop, Abbot, Prior, Earl, Baron, &c.) which should have a Summons to Parliament, should come from thenceforth to the Parliaments in the manner as they were bounden to do, and had been accustomed within the Realm of England of old times; and if they did absent themselves,

an Essential part of Parliament. 21

themselves, and came not, *he* and *they* should be *amerced*, or otherwise *punished* according as of *old times* had been *accustomed* to be done: from hence I shall observe,

1. That there were *Summons* to *Parliament* of *old times*, as well to the *Commonalties*, that is, the *Citizens* and *Burgeses*; as to the *Archbishops*, *Bishops*, *Abbots*, *Priors*, *Earls* and *Barons*; and so the *Statute* may seem to affirm the prescription of *S^t Albans*, that saith, that they had sent *Duos Comburgenses sicut ceteri Burgeses regni* did to every *Parliament totis retroactis temporibus* before *E. 1.* and his *Progenitors*.

2. That the phrase of *old times* is in point of prescription and antiquity applied equally, and without distinction or limitation, as well to the great *Lords*, as *Commons*; But if the first had of *old times*, as our modern Authors write, been

The Commons of England ever the only constituent parts of the Parliament, it might in reason and prudence be thought, they would not have consented to have admitted that Summons to Parliament; for the Commons was *Coeval* with theirs; nor would they have ratified and confirmed by a solemn Act the protestation or declaration of Right of the Commons of *England* in the Parliament, 2 *H.* 5. n. 10. *That the Commons had ever been a member of the Parliament, and that no Statute or Law could be made without their assent.* 3. That if the Lords and Commons absented themselves, and came not to Parliament, they should be amerced, or otherwise punished as of *old times* had been accustomed to be done; this branch plainly agrees, 1. With the *Modus tenendi Parliamentum*, Written as Mr *Selden* saith *tempore E.* 3. That the first day

an Essential part of Parliament. 23

day the Burgesſes and Citizens ſhould be called, and if they did not come, they ſhould be amerced; and ſo Mr Prynne miſtakes in his Animadverſions, when he ſaith, that no abſent Lord was fined before 31 H. 6. 2. It appears, *Ex vi terminorum*, of old times it had been ſo accuſtomed to be done; that this preſcription may well be applyed to the Parliament of 16 Joh. and long before; for the Statute of *Magna Charta*, 17 of that King, ſaith, *Civitas London habeat omnes libertates ſuas antiquas*; by force and vertue of which word, *antiquas*, their old or ancient Liberties and Cuſtoms (not only confirmed by the *Magna Charta* of William the Firſt, but uſed even in the Saxon times, and before) were in Parliament ratified and confirmed.

Mr. Prynne's Animadverſions on the Lord Cokes Fourth Inſt. pag. 3.

The THIRD
ARGUMENT.

From the solemn and great Judgment of both Lords and Commons in the Parliament of 40 E. 3. against the Pope, That if King John had An. 14. of his Reign, which was three years before the granting of his Magna Charta, made the Kingdom tributary to the Pope, he had done it sanz lour assent, which must be understood to be without the consent of the Lords and Commons, and therefore void.

Mat. Paris An.
no 1213. pag.
236. An. Regni
Job. 14.

King John An. 14. of his Reign made himself and Crown tributary to the Pope.

Rot. Parl. 40
E. 3. n. 7, 8.

But Anno 40 E. 3. The Prelats, Dukes, Counts, Barons, and Commons ;

mons; upon their full deliberation in Parliament, resolved with one accord, that neither the King, nor any other, could put the Realm nor people thereof into such subjection, *sanx assent de eux*, without their assent, viz. as well of the Commons, as of the Lords: and that it appeared by many Evidences, that if he had so done, it was done *sanx leur assent*, and contrary to the Coronation Oath.

And with this agree the Scottish Laws. *Et idem Rex Scotiæ dicit sic ut prius quod de aliquo Regno suum contingente non est ausus nec potest hic respondere*

inconsultis probis hominibus regni nostri. Placita Parl. inter Johannem Regem Scotiæ & Magdolphum. 21 E. 1. pag. 157. Item ad roborandum confederationem quandam initam inter ipsum Francorum Regem ex una parte & dictum Johannem de Balliolo ac Prelatos & Nobiles & Universitates & Communitates Civitatum & villarum dicti Regni Scotiæ pro ipsis & eorum heredibus & successoribus ex altera parte. Ex Rot. in Turri London. Prynn's 3: Tom. of Ecclesiastical Jurisdiction, 28 E. 1.

And if the Pope attempted any thing against either (having at the instance and sollicitation of the French King, threatened to interdict or out-law both) King and Kingdom; They would oppose and

Rot. Pat. 15
Johannis Pars
2. m. 8. Interdictum, quod vulgariter utlagatio nuncupatur.

The Commons of England ever
and resist him, ove tout lour puis-
sance.

The observations I shall make
from this great Judgment shall be
two.

1. That above 300. Years ago,
there was not the least scruple or
fancy, that the Commons of Eng-
land, of which the Citizens and
Burgesses were then undoubtedly
a part, ought not, and were not
to be present in the *Commune Concili-*
um Regni, or Parliament of King
Johns Reign, and to have assented
to that Kings resignation, *An. 14.*
to make it legal and valid, as
well as the Prelates, Earls, and
Barons.

Nam cum sub
Edwardo ter-
tio in ordinum
confessu questio
habebatur de
donatione illa
decantatissima
Johannis Regis
facta Innocen-
tio Papæ tertio
& successoribus
ejus, unde Urbanus
Quintus
tum annum in-
de natum mille
marcarum Ang-
liæ & Hiber-
niæ simul no-
mine censum sibi
tunc solvi pete-

bat, &c. Ordines universi idq; tam generis bistratici (quod mirere) quam
Proceres seu Senatus populusq; in Comitibus illis solenni inita deliberatione re-
sponderunt unanimes irritam plane fuisse Johannis donationem illam utpote
tam sine Ordinum assensu quam Furamento ejus inaugurali adversam. Johan-
nis Seldeni ad Fletam Dissertatio. Cap. 10. fol. 552.

2. If the Commons had never
been a part of the Parliament be-
fore

an Essential part of Parliament. 27

fore 49 H. 3. but that the King and great Lords only made Laws, and had an inherent power (as some of our Modern Writers say) to tax the whole Kingdom, *de alto & basso ad libitum suum jure representationis*; surely they would not have left recorded to posterity so great a testimonial of the antiquity and right of the Commons of England (then so distinguished from the great Lords) as is expressed in the Roll: May it not then be admitted they spoke nothing but what was an undisputable truth, *in diebus illis*, unless we must believe, that the great and learned Authors of this Age, better understand the constituent parts of the *Communia Concilia*, or Parliaments of King John's time (and so upward) above 460. Years since, than the whole Parliament of 40 E. 3. the Parliaments of their Grand-Fathers time,
as

The Commons of England ever

as was the Reign of King *John*.

And indeed this famous resolution was no other than a Declaration of the antient Common Law of the Land before the Norman Duke gained the Imperial Crown of *England*, as appears by King *Harolds* Answer to his Ambassadors, requiring the performance of the Kings Oath to take the Dukes Daughter to Wife, and to preserve the Crown for him.

De Regno addebat presumptuosum fuisse, quod absq; generali Senatus & populi Conventu & Edicto alienam illi hereditatem juraverit

Which is recorded by *William* of *Malmsbury*, *Lib. 3. p. 56. l. 24. in vita Williemi I.* an Author without all exception, who flourished in the time of *H. 1.* and therefore could not be ignorant where and in whom the Legislative Power of *England* did reside, there being but

an Essential part of Parliament. 29

33. Years from the coming in of the Norman Duke till the Reign of that King, and of this Historian the learned *Balaus* gives this *Eulogium*, *Vir erat suo seculo in omni genere bonarum literarum plene eruditissimus, & in eruendis antiquitatibus ingenio, diligentia & industria singularis Angliæ nostræ nationis studiosissimus illustrator.*

Upon the Death of *Arthur* Duke of *Bretaign*, the *Annals* of *England* tell us, that King *John* was Summoned by the French King, as Duke of *Normandy* to appear at his Court, and judicially to answer the pretended murder of *Arthur* his Nephew; whereupon the Bishop of *Ely*, and *Hubert de Burgo*, after Earl of *Kent*, and Chief Justice of *England*, *nuntii solennes & prudentes*, were sent to the French King, to whom the Bishop thus spake, *Domine Rex non possit Dux Normanniæ* Mat. Paris. pag. 283, 284.
ad

30 The Commons of England ever

*Nonine Barona-
gii Angliæ om-
nes quodammo-
do Regni Ordini
contineren-
tur. Camd. Bri-
tan. in 4. De
Ordin. Angliæ.
fol. 61.*

*ad Curiam vestram venire, nisi veniret
Rex Angliæ, cum una persona sint
Dux & Rex. Quod non permetteret
aliquo modo Baronagium Angliæ, etsi
ipse Rex hoc vellet.* So careful was
the Baronage or Parliament to
preserve the antient rights, safety,
and honour of the King and King-
dom, *An. 3 Joh.* before any diffe-
rence happened between him and
his Subjects.

*Ex Chronico
Adam Meri-
mouth in Bib-
liotheca Cor-
roniana sub
Effigie Cleo-
patræ. A. 16.
p. 67, 68. An.
Dom. 1300.
29 E. 1.*

Anno 29 E. 1. the King sent Am-
bassadors to the French King, *ut
quid de truga, de guerra & de pace
deliberasset, nunciaret,* and was an-
swered, *se non posse sine duodecim pa-
ribus qui occupati fuerunt circa novam
guerram tam ardua tractare,* but that
he expected their coming in fif-
teen daies. *Quo tempore transacto, ipsis
consentientibus,* they declare that they
could not determine thereof, *incon-
sultis secum Scotis.* Whereupon those
Ambassadors returned. *Igitur con-*
vocato

an Essential part of Parliament. 31

vocato Parlamento Londoniis, recitatisq;
frustratoriis dilationibus & falsis machi-
nationibus predictorum, Ambassadors
were again sent, and received this
answer: *Quod Rex Anglia adveniret*
personaliter, & inter duos Reges de op-
tima pace conveniretur: Whereupon
the King of England, Aliud habuit
Parliamentum, in quo talia recitata dis-
plicuerunt, & ex totius Regni Concilio
(or Parliament) definitum est, Regem
pro aliquo mandato vel suggestionibus ab
Anglia egredi non debere.

Rot. Claus. 3
E. I. m. 9. in
Schedula. De
liberationem
habere cum Pre-
latis & Proce-
ribus (i.e.) Par-
liamento sine
quorum commu-
nicato consilio
Sanctitati ve-
stra super pre-
dictis non possu-
mus respondere,
& Jurejurando
in Coronatione

nostra prestito sumus astricti quod jura Regni nostri servabimus illibata, nec
aliquid quod Diadema tangat Regni ejusdem absq; ipsorum requisito Consilio
faciemus.

From what hath been said, the
Reader may easily observe, 1. That
the weighty and great affairs which
concerned the King and Kingdom,
both in the Saxons time, and after,
were by a fundamental principle
and law of the Nation to be consul-
ted of, and resolved in the *Communia*
Concilia, or Parliaments, and that
no

The Commons of England ever

no particular person or order of men did take upon them such power, *sine consensu Regni*: and this H. 3. and his Council well knew, when he told Otto the Popes Nun-

Mat. Paris. pag.
325. l. 45. 9
H. 3.

tio, Quod solus non potuit definire, nec debuit negotium, quod omnes Clericos & Laicos generaliter totius Regni tangebatur, which E. 1. and his Council in the 23th Year of his Reign thus

Rot. Claus. 23
E. 1. m. 3.
dorso.

confirms, Quod omnes tangit, ab omnibus approbetur. 2. That the Generalis Senatus, & Populi Conventus, & Edictum, or Saxon Wittena Gemott, the Baronagium Angliæ, in King Johns time, and the Concilium Regni, or Parliamentum, in the Reign of E. 1. were verba synonyma, differing in phrase, but one and the same Assembly in substance.

The

The FOURTH ARGUMENT.

From several Records, inter alia de Annis 28, 32, 37, 42, & 48 H. 3. mentioning Parliaments then held, and their proceedings, in some of which the word Commons are expressly mentioned, as well as the Prelates & Magnates, to be part of those Parliaments.

THE general Council at Run-
ningmead, held 17 Job. is 29.
Years after, and 20. Years before
49 H. 3. called Parliamentum de
Runemed.

Rot. Claus. 28
H. 3. pars uni-
ca, m. 12. dor-
so.

*Memorandum quod in Parlamento à
die Pasch. in tres septimanas Anno Regni
Regis H. 3. 28. London celebrato
negotium Crucis in Anglia una cum col-
lectione decime beneficiorum Ecclesiasti-*
D *eorum*

Rot. Pat. 28 H.
3. m. 13. intus.

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corum Domino Regi in Subsidiū terræ Sanctæ à sede Apostolica deputat. was treated of.

Rot. Claus. Pat.
32 H. 3. m. 13.
dorso.

An Utlary against *William de Hastingscott*, was reversed, and he restored to all he had lost thereby, and this done *Coram Rege & toto Parlamento.*

Rot. Claus. 32
H. 3. m. 12.
dorso. Rex n.
Northwich E.
piscopo, &c.
in ultimo Par-
liamento no-
stro quod fuit
London.

Inter Communia Hilar. 17 E. 3.

penes Rememoratorem Domini Regis in Scaccario; It appears in a Plea between the King and the Prior of Coventry, that 29 & 32 H. 3. *quedam subsidia per Magnates & Communitatem Regni spontanea & mera volun-*

Bracton Lib. 2.
cap. 16. fol. 37.

tate Regi concessa (or as Bracton phraseth it, *Ex consensu Communi totius Regni*, being one and the same with *Magnates & Communitas*;) towards the marrying of the Kings Eldest Daughter, and also the Kings Sister to *Frederick* the Emperour, which was done in Parliament; for the Close Roll of that Year

an Essential part of Parliament. 35

Year tells us of a Parliament, *Consideratum fuit in Curia nostra & toto Parlamento nostro, &c.*

Rot. Claus. 32
H. 3. m. 13.
dorio.

In a Parliament 37 H. 3. (for so Mat. Westm. calls it, pag. 352.) Rex, Magnates & Communitas populi protestantur publice, that they would never consent to any thing in the grand and terrible Excommunication then to be pronounced by the Clergy against the infringers of Magna Charta, contra consuetudines Regni antiquas & usitatas, In cuius rei testimonium & in posterum veritatis testimonium, as well the King as the Earls of Norff. Heref. Essex ad Warwick, as Peter de Sabaudia, at the instance and desire aliorum Magnatum & populi presentium scripto sigilla sua apposuerunt.

Rot. Pat. 37
H. 3. m. 12.
dorio.
At this Parliament was the dreadful Sentence or Curse published in the great Hall at Westm. by the Clergy against the breakers of Magna Charta by consent of Parliament.
Rastals Stat. fol. 15.

Rex &c. Cum nuper in Parlamento nostro Oxon. communiter fuit ordinatum

Rot. Pat. 42 H.
3. m. 3. n. 9.
De Inquisitionibus faciendis

per singulos Comitatus Angliæ. Rot. Pat. 42 H. 3. m. 4. Henr. &c. Saches que pur le profit de nostre Reaume & a La requeste de noz haus homes e prodes homes e du Comun de nostre Reaume.

D 2

quod

The Commons of England ever

quod omnes excessus & injurie factæ in Regno uestro inquirentur per quatuor milites singulorum Comitatum, ut cognita inde veritate facilius corrigantur, &c.

I have an Abridgment or abstract of the Rolls of this Parliament, writ by the hand of Mr. *El-ling*, late Clark of the Parliament, who saith, my Lord Coke had it; and some of the proceedings therein mentioned, I have found in the Exchequer enrolled at that time.

Rot. Pat. 48 H.

3. pars unica

m. 6. dorso.

Forma pacis inter Regem &

Barones.

The Articles of Peace à Domino Rege & Domino Edwardo, Prælati & Proceribus omnibus & Communitate tota Regni Angliæ communiter & concorditer approbata, were sealed by the Bishop of Lincoln, the Bishop of Ely, Earl of Norff. Earl of Oxon, Humphry Bohun, Will. de Monte Canisio & Major London in Parlamento London Mense Junii, Anno Domini 1264. de consensu, voluntate & præcepto

præcepto Domini Regis, nec non Prælatorum, Baronum ac etiam Communitatis tunc ibidem præsentium.

And not only so, but that Record tells us, *Quod quædam Ordinatio facta in Parlamento London habito circa festum Nativitatis Sancti Johannis Baptistæ proximè præteritum pro pace Regni conservanda.*

And we read in another Record,

Rex &c. Cum super præteritis guer- Rot. Pat. 48
H. 2. m. 4.
dorso.
rarum discriminibus in Regno Angliæ subortis, Quædam ordinatio seu forma pacis de nostro Prælatorum, Baronum & totius Communitatis Regni prædicti unanimi voluntate & assensu provida deliberatione inita fuerit, &c. In cujus rei testimonium huic Scripto nos Rex Angliæ, Comes Leyc. & Glouc. Jo. filius Johannis, Johannes de Burgo Sen. Will. de Monte Canisio, Henr. de Hastings, & Gilbertus de Gaunt, pro nobis & cæteris Baronibus & Com-

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*munitate Regni Angliae Sigilla nostra
apposuimus. Dat. apud Cantuar. die
Jovis proxime post Festum Nativitatis
beate Virginis, Anno 1264.*

*Rastals Stat. p.
987. Stat. 3 &
4 E. 6. Cap. 3.
where in the
Parliament
holden at Mer-
ton in the 20
H. 3.*

And therefore those that hold
that there were no Commons, or
Citizens and Burgesses in Parlia-
ment before 49 *Hen. 3.* would do
well to define and ascertain, who
the *Communitas* were after the
words *Praelati, Barones & Magnates*,
in the before-expressed Records.

The

The FIFTH
ARGUMENT.

*From an Act of Parliament, An. 2 H.
5. that famous Prince, where it is
declared and admitted, that the Com=
mons of the Land were ever a part
of the Parliament, and so conse=
quently were part of the Parliament
Annis 16, 17 Joh. 28, 32, 37,
42, 48 H. 3. all within the pre=
scription of the Borough of S. Al=
bans.*

THE Commons of England, up=
on their claim or protesta=
tion, had, as their undoubted
and unquestionable right, and in=
herent priviledge, allowed and ad=
mitted in Parliament, that they
had ever been a member of Parlia=
ment

The Commons of England ever

ment: then were they a member of that 16 *Joh.* before-mentioned, of 17 *Joh.* 28, 32, 37, 42, & 48 *H.* 3. and that no Statute or Law could be made without their assent.

Rot. Parl. 2 H.

5. p. 2. n. 10.

Notz. This me-

morable Re-

cord amongst

several others

as remarkable,

is entirely left

out in the Ex-

act Abridg-

ment of the

Parliament

Rolls, publish-

ed under the

name of Sir Ro-

bert Cotton, by

Mr. Pryn.

The Record says, That so as
*hit hath ever be their liberte and
 freedome, that thar should no Sta-
 tute, ne Law, be made of lasse then
 they yasse therto their Assent, con-
 sidering that the Commune of your
 Lond, the which that is and ever
 hath be a membre of your Parlia-
 ment, ben as well Assentirs as Peti-
 tioners.*

Yet was the affirmation of the
 Commons no other than a reno-
 vation or memorial of the ancient
 Law of the Land, as is proved be-
 fore, and more fully explained and
 confirmed by the Petition to the
 King and his Learned Council, and
 answer thereto in the Parliament
 of

Placita Parl. p.

619. Pet. Parl.

18 H. 2. n. 2.

Engleterre.

an Essential part of Parliament. 41

of 8 E. 2. The Record is not unworthy of a serious perusal. *Erchevesq; Evesq; Prelatz, Counts, Barons, & autre gentz de la Comunyaalte Dengleterre que tiegnent leur Manoirs en chief de nostre Seigneur, as well within the Forest as without, to which Mannors they had Gasz (Wast) appendant, dont les Seignourages avantditz arentunt, by the acre, half acre, & per rode en approvaunt leur Manoirs. Whereupon the Ministers of the King made seisure thereof, Pur ceo qu' eux ne unt la licence le Roy d'entrer. Therefore they pray, that they may approver leur Manoirs & le povre peuple eyser, &c. Responsum in dorso, Il ne put estre fait sanz novele ley la quele chose fere la Comunalte de la terre ne vult my uncore assentir. infra, Coram rege.*

From hence I make these Observations.

1. It proves that the Law could not be altered without consent of the

Rot. Parl. 22
E. 3. n. 30.

the *Commons* of *England*, though in a case particular to the King, as this was, for the Petition was *contra Regem*; nor could the King and Commons, without the Lords. For *E. 3. per avys des Prelatz & Grauntz de la terre fist respondre as les petitions des Communes touchantes la leye de la terre, que les leyes cues & useez en temps passez, ne le processe dycelle useez ce en arere, ne se purrent changer sanz ent faire novel Estatute*, which as then they could not attend, but shortly would.

2. That they ought to agree to all new *Laws*, and that no Statute could be made without their assent. It is then remarkable, 1. That the *Commons* of *England*, as now we stile them, gave their suffrage and vote in the enacting and making of all Statutes and *Laws* in the time of the Progenitors of *H. 3.* which taken *extensivè*, is a very large pre-
scription

an Essential part of Parliament. 43

scription of right, for that King by the Statute of *Assisa panis & cervisie*, made after 49. when it is pretended the Commons began, viz.

An. 51. tells us, That at his Parliament held the first year of his Reign, he had granted that all good Statutes and Ordinances, made in the time of his Progenitors, and not revoked, should still be held. 2. But admitting the word Progenitors be restrained to two, which I conceive was never intended by the Law-makers, yet it cannot be denied but that the Statute of Magna Charta, for so it is called 5 H. 3. Fitz-herb. Abrid. tit. Mordaunc. n. 53. and by Fleta, Lib. 1. Cap. 28. and all other Statutes made at least, *temporibus Johannis & Ricardi I.* Father and Uncle of Henry the Third, had the assent of the Commons in Parliament, to make them Laws.

Pulton Stat.

Rot. Pat. 1 H. 3. m. 13.

Rex Archiepiscopis, &c. Militibus & libere tenentibus & omnibus fidelibus suis per Hiberniam, &c. quod in signum fidelitatis vestre, &c. libertatis Regno nostro Angliæ a patre nostro & nobis concessis de gratia nostra & dono in Regno Hiberniæ gaudeatis, &c.

Sed non sic Angliæ Statuta ori-ri possunt dum nōdum Principis voluntate sed & totius Regni assensu ipsa condantur. Fortescue, cap. 8. pag. 40.

Now

Now the word *Progenitors* in the Statute, must I conceive go higher than Ric. 1. for *Bracton* a Learned Judge, who flourished in the time of *Henry* the Third, and so by a reasonable computation of time, may be supposed to have lived in the latter end of the Reign of Ric. 1. or beginning of King *John's*, after he had declared to posterity that he had bent his mind, *ad vetera iudicia perscrutanda diligenter non sine vigiliis & labore*, and whatsoever he found *Notatu dignum*, he reduced in *unam summam perpetue*

Bracton. Lib.
1. cap. 1. fol. 1.
Inhibitio ne qui
Magnates, viz.
Comes, Baro,
Miles, seu ali-
qua alia nota-
bilis persona
transseat ad par-
tes transmar-
inas. Rot. Claus.
3 E. 2. m. 16.
dorso.

memorie commendanda, concludes this point thus. *Cum legis vigorem habeat quicquid de consilio & de consensu Magnatum & Reipublicæ communi sponfione auctoritate Regis sive Principis præcedente justè fuerit definitum & approbatum.*

And so just and excellent was the ballance of the Constitution of

our

our legal Government, in preventing any order or rank of the Subjects, to impose upon or bind the rest without their *common consent*, and in conserving as it were an universal *liberty and property* to every individual degree of men, from being taken from them without their assent, as the County Palatine of *Chæster, ab antiquo* were not Kings *Vale* subject to such Laws to which they Royal of *Eng-* did not consent; for as well before land, fol. 9, 10, the Conquest of *England*, as after, 11. they had their *Commune Concilium*, or Court of Parliament, by authority of which the *Barones, Milites & quamplures alii* (Rot. 44 H. 3. m. 1. dorso) *Barones liberi homines & omnes alii fideles* (Rot. Pat. 3 E. 1. m. 6.) or as the Supplication to H. 6. saith, The Abbots, Priors, *Apud Eundem.* Which Suppli-
cation, though it be not that I know of upon Record, yet I have seen very many Copies thereof, and particularly I have a Copy of it my self which was written in the year MDLxxxiii. *Ex liberis Domini Tho. Man-*
waring Cestrensis Baronetti ad me missis, Anno Dom. 1675.

Clergy,

Clergy, Barons, Knights, Esquires, and Commonalty, did with the consent of the Earl make or admit Laws within the same, such as should be thought expedient and behoveful for the Weal of the Inheritors and inheritance of the said County, and no Inheritors or Possessors within the said County were chargeable or liable, or were bounden, charged, or hurt of their Bodies, Liberties, Franchises, Lands, Goods, or Possessions, unless the said County (or Parliament) had agreed unto it. And I dare under submission affirm, that neither this County Palatine, nor *Durham*, were ever subjugated to have their Estates given away, at the good will and pleasure of the Earl or Bishop, under any notion or fancy in those days of being their representatives in the *Commune Concilium Regni*, or that being dependant Tenants,

an Essential part of Parliament. 47

Tenants, their consents were included in their Lords assent: and if the *Commune Concilium Cestrense*, or Parliament, was deduced from Records, it would be of greater use to shew us as in a Mirror the Government of *England* in antient days, than what I have yet seen published by any Author.

3. That the Answer of the King to the Petition penned and made by all the Judges of the Land, his Council in Parliament cannot be supposed to be grounded upon a modern usage of 59. years from the time of 49 *H.* 3. till then, if the Tenants in *Capite jure representationis*, made the Parliament as some hold, but was a Declaration of the ancient Custom and right of the Nation.

4. That it was not in the power of all the Tenants in *Capite* of *England*, or the greatest part, who were

The Commons of England ever

were the Petitioners, though with the Kings consent, to bind and oblige others, or to make or alter a Law, *sine assensu Communitatis Regni*, who had *votum consultivum*, and *decisivum*, an Act of Authority and Jurisdiction, as well in assenting to spiritual Laws as Temporal, as may appear for an instance, in their Declaration or Protestation to E. 3. in Parliament.

Rot. Parl. 51

E. 3. art. 46.

Le Convocation ne grante au Petition du Clergie si ne n'ad aucun pouvoir a faire aucun chose a lier le Temporalite.

20 H. 6. 13.

Et issint le Rule

44 E. 3. 19.

et n'ay q' nul

ley oblige le poe-

ple fors q' ceo q'

est fait par con-

sent del poeple.

Davis Rep. fol.

32.

Que nul estatut ne Ordenance soit fait
ne grante au Petition du Clergie si ne
soit per assent de voz Communes, ne que
vous dites Communes ne soient obligez
per nulles constitutions q'ils font pur leur
avantage sanz assent de voz dites Com-
munes : Car eux ne veullent estre obligez
nul de voz Estatuz ne Ordinances faitz
sanz leur assent.

Fortescue cap. 8. pag. 40. tells us,
Sed non sic Angliæ Statuta oriri possunt
dum nedum Principis voluntate sed &
totius Regni assensu ipsa conduntur.

Et

an Essential part of Parliament. 49

Et si Statuta licet tanta solemnitate & prudentia edita, efficaciam tantam quantam conditorum cupiebat intentio, non esse contingant; Concito reformari ipsa possunt & non sine Communitatis & Procerum Regni illius assensu quali ipsa primitus emanarunt. And that this was the antient Law and Right of the Kingdom, appears by the answer of E. 1. an^o 22. of his Reign to the Petition of the whole Clergy of England; for the Clergy having given the King *medietatem omnium bonorum tam temporalium quam spiritualium*, complaining that the Immunity of the Church *laxa fuit* & violata, petiit à Rege quosdam Articulos (Rege jubente) jussit enim Rex postquam votis ipsius paruerant (in giving the Subsidy) ut ipsi ab eo peterent remedia quæ vellent. Et petierunt imprimis ut Statutum de manu mortua, quod in præjudicium Sanctæ Matris Ecclesiæ fuit editum, deleteretur. Cui quidem

Henr. de Knighton de Eventibus Angliæ lib. 3. pag. 2502. l. 24. An. Dom. 1294. 22 E. 1.

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were the Petitioners, though with the Kings consent, to bind and oblige others, or to make or alter a Law, *sine assensu Communitatis Regni*, who had *votum consultivum*, and *decisivum*, an Act of Authority and Jurisdiction, as well in assenting to spiritual Laws as Temporal, as may appear for an instance, in their Declaration or Protestation to E. 3. in Parliament.

Rot. Parl. 51

E. 3. art. 46.

Le Convocation ne grante au Petition du Clergie si ne n'ad aucun pouvoir a faire aucun chose au lier le Temporalite.

20 H. 6. 13.

Et issint le Role

44 E. 3. 19.

et tray q' nul ley oblige le poeple fors q' ceo q' est fait par consent del poeple.

Davis Rep. fol.

22.

Que nul estatut ne Ordenance soit fait ne grante au Petition du Clergie si ne soit per assent de voz Communes, ne que vous dites Communes ne soient obligez per nalles constitutions q'ils font pur leur avantage sanz assent de voz dites Communes: Car eux ne veulent estre obligez nul de voz Estatuz ne Ordinances faitz sanz leur assent.

Fortescue cap. 8. pag. 40. tells us,
Sed non sic Angliæ Statuta oriri possunt
dum nedum Principis voluntate sed &
totius Regni assensu ipsa conduntur.

Et

an Essential part of Parliament. 49

Et si Statuta licet tanta solennitate & prudentia edita, efficacie tantæ quantæ conditorum cupiebat intentio, non esse contingant; Contito reformari ipsa possunt & non sine Communitatis & Procerum Regni illius assensu quali ipsa primitus emanarunt. And that this was the antient Law and Right of the Kingdom, appears by the answer of E. 1. an^o 22. of his Reign to the Petition of the whole Clergy of England; for the Clergy having given the King *medietatem omnium bonorum tam temporalium quam spiritualium*, complaining that the Immunity of the Church *lesa fuit* & violata, petiit à Rege quosdam Articulos, (Rege iubente) jussit enim Rex postquam votis ipsius paruerant (in giving the Subsidy) ut ipsi ab eo peterent remedia quæ vellent. Et petierunt imprimis ut Statutum de manu mortua, quod in præjudicium Sanctæ Matris Ecclesiæ fuit editum, deleretur. Cui quidem

Henr. de Knighton de Eventibus Angliæ lib. 3. pag. 2502. l. 24. An. Dom. 1294. 22 E. 1.

F.

Articulo

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Articulo respondit Rex, quod idem Statutum de Consilio Magnatum suorum (so phrased by the Historian) fuerat editum & ordinatum, & absq; eorum Consilio non erat revocandum : but a more certain authority tells us, that the Statute was made, *per Commune Concilium Regni*, or Parliament, as appears by Rot. Claus. 7 E. 1. m. 5. dorso. Rot. Pat. 10 E. 1. m. 13. and then the Commons were unquestionably an essential part, and joined in the making the Statute.

Vide Coke 2.
Inst. fol. 75.

The

The SIXTH ARGUMENT.

From the form of penning of Acts of Parliament, and expressions in Records in 49, 51, 54 H. 3. when it is pretended the Commons first began to be a part of the Legislative Power, which agree with the phrases of Records of Acts of Parliament before that time.

THE King writes to the Bishop of London, and to the rest of the Bishops of the Province of Canterbury; that his heart was wounded *acuto dolore*, that the Earl of Gloucester, and other Rebels, had by crafty persuasions circumvented, *proh dolor!* Prince Edward, & *ad partem suam proditorie*

Rot. Par. 2.
H. 3. m.
intus. n.

E 2 attrax-

The Commons of England ever

attraxerunt proprii contemptu Sacramenti, contra formam de nostro & ejusdem filii nostri, Prælatorum, Magnatum & Communitatis Regni nostri unanimi assensu & voluntate nuper London. provisam.

Rot. Pat. 51
H. 3. m. 16.
Pro pace inter
Regem & Com.
Glouc.

Not. Richard
Earl of Corn-
wal, was E-
lected King of
Hungary, or
Almain.

Ibidem.

Coke 2. Instit.
fol. 559.

Articuli Cleri
ex fragmento.

Rot. Parl. An.
51 H. 3.

The King per le conseil & l'assente-
ment le Rei de Alemain & de Countes,
& de Baruns, & del Commun de la
terre, pardoned and released the
Earl of Gloucester, and all his Com-
pany, &c.

And the King per le Conseil & l'as-
sentement le Rei de Alemain, & les
Countes, & de Barons, & le Commun
de la terre, pardoned and released
the Londoners, totes maneres de
ire & de rancour & de male volente,
&c.

Rot. Pat. 54
H. 3. m. 7. in-
rus. De signo
Crucis primoge-
niti Regis &
XX. foli concessa
in Subsidium
tome Sancte.

The King and Prince having
undertaken the Crusado, for the
Holy Land, quia tamen Prælati,
Magnatibus & Communitati Regni
non videtur expediens neq; tutum, that
they

an Essential part of Parliament. 53

they should be both out of the Kingdom, *istis temporibus*, it was agreed the Prince should go, and a Subsidy was granted to the Prince by the Parliament.

If one should shew the Authors of the *novel opinion*, only these Records, and thereupon ask them who the *Communitas*, mentioned in these Records, after the words *Prælati, Barones, & Magnates* were, I doubt not but they would say, Knights, Citizens, and Burgeses, because they are after the pretended inception of 49 H. 3. but then I desire to know what authority they can shew, why the *Communitas* in 29, 32, 37, & 48 H. 3. should not be a part of the Parliament as much as of 49, 51, 54. of that King, since the words or phrases of both are alike in the Records.

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For I do not think it a true way of reasoning, That because the notation of 49 *H.* 3. is generally published by our now Historians, and so believed: *Ergo*, it unquestionably was so, and has always and in all ages been distinctly known and believed.

The

The SEVENTH ARGUMENT.

*From the defect and loss of Parliament
Rolls of H. 3. and E. 1. and from
the universal silence of all Records,
and our antient Historians contem-
porary and succeeding 49 H. 3. till
our days.*

IT is true indeed for any thing
yet appears, the Parliament
Rolls of H. 3. are all lost or de-
stroyed, though references are
made to them by several Clause
and Patent Rolls of E. 1. and E.
2. yet no direct Writ of Summons
ad Parliamentum, is extant of that
time, either of the Lords or Com-
mons (so M^r Pryn) till the Dorset
the Clause Roll 49 H. 3. in a
E. 4 Sche-

For all Parlia-
ment Rolls of
the time of H.
3. are lost ex-
cept one, of some
passages in the
Parliament at
Oxford, in 44.
of the same
King, which I
have hereto-
fore used by
the favour of
an honourable
person that
communicated
it. Selden's Ti-
tles of Honor,
pag. 557.

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Schedule affixed thereto, where there are Writs for Electing and sending to a Parliament at *London*, two Knights, Citizens, and Burgeses, and Barons for the Cinque-Ports, and likewise Summons to the great Lords.

But if that Roll of 49 *H. 3.* and *Rot. Claus. 22 E. 1.* had been destroyed as many others of that time were, then had there been no footsteps or testimony left us on Record, yet discovered, of any formal Summons to Parliament, of them or the Prelats and temporal great Lords, till 23 *E. 1.* though several Parliaments were in the interim, no less than twelve as the Printed Statute Books tell us. And the Commons expressly said to be present at some, and implied in all, if the Phrase of *Commune Concilium Regni* implies so much, which I think is unquestionable when compared

Pryn's first Part of Parliamentary Writs, fol. 160.

Apud eundem parte secunda, fol. 33.

Pulton's Stat. fol. 14, 18, 25, 26, 43, 44, 46, 67, 68, 71, 73.

an Essential part of Parliament. 57

compared with the Statute of *Westm.* 1. made 3 E. 1. which was not eleven years after 49 H. 3. wherein the constituent parts of the *Commune Concilium Regni*, are enumerated and exprest, the Statute being made *Per l'assentements des Archievesques, Evesques, Abbes, Priors, Countes, Barons & tout le Comminalty de la terre illonques summones.*

Now because from that one Record of 49 H. 3. (being the only Roll as yet found out) it should be wonderfully observed, and from thence infallibly concluded and nicked, and by an ominous and influential Asterism of Rebellion and Treason marked, that the very first Writs (whereby the great

Lords to great Councils, being utterly lost through negligence, or perished through the rust or consumption of time, the very first Writ of Summons to them, and Kalendar of their names, now remaining, is that of 49 H. 3. *Prynns Register of Parliamentary Writs, Part 1. fol. 160.* But to point out who they were (*viz. Barones majores*) that had their first rise by Writ of Summons until 22 E. 1. and afterwards, passeth my skill, there being no publick Record that doth make mention of them till then, excepting that of 49 H. 3. *Dugdales Pref. to his Baronagium Anglie, Tom. 1.*

Vide the Writs upon the Statutes of Westm. 1. 3 E. 1. Glouc. 6 E. 1. de mercatoribus, 13 E. 1. de Vasso, 20 E. 1. declare they were made per Commune Concilium Regni. Coke 2. Instit. fol. 156.

All the antientest Writs of Summons of our Temporal

Lords

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Lords are said to be also first Summoned) to send two Knights, Citizens, and Burgeses for each County, City, and Borough, *ad Parliamentum*, in *Octabis Sancti Hilarii*, were made in this very year, at that very *Crisis* of time, nay tested on such very days, when the rebellious Barons (after the Battel of *Lewes*) had the King and Prince in their power, and exercised Regal Authority in his name, under good favour seems not at all satisfactory and convincing to me, until they give more certain and greater testimonials and evidence, and answer these few Records.

If the *Epocha* of the Knights, Citizens, and Burgeses, or Commons (as now called and distinguished from the great Lords) being first admitted a part of the Parliament and Legislative Power, had such a Creation and Origin

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gine, it is more than a wonder, though the Parliament Rolls be destroyed, that the Lieger Books, Charters, or Historians of that time, either National or Foreign, of which there are not a few, or our antient Lawyers, *Bracton*, *Britton*, *Fleta*, and *Hengham*, had not amongst many Narratives of far less moment and weight, given posterity a remark, or some short hint or memorial of so suddain, so great, and so universal a change or Catastrophe of the whole constitution and ancient frame of the English Government, as that must unquestionably be admitted to be, or some subsequent Chronologer had not so much as dreamed of it till of late, or that branch in the ancient Coronation Oath of our Kings, demanded by the Archbishop, had not been omitted, or never administred, which runs thus.

Concedis

Ex MS. penes
Honorabilem
Dominum Bar.
de Hollis.

Concedis *justas leges & consuetudines esse tenendas, & promittis per te esse protegendas, & ad honorem Dei corroborandas quas Vulgus elegerit secundum vires tuas.* [Respondebit Rex, *Concedo & promitto.*]

The word *Elegerit*, being admitted to be of the *præterperfectum*, it certainly shews, that the peoples Election had been the foundation and ground of antient Laws and Customs; and the term of *justas leges*, seems to allow a liberty of debate, reason, and argument, so much as might be of efficacy and force, to demonstrate and convince, that the Laws so required by the *Commons* of the King, were just and reasonable; the debate and consideration of which certainly was never, nor ever could be intended to be done in the diffusive capacity of all the *Commons* of England, *separatim*, but in an intire,

OR

an Essential part of Parliament. 61

or in an aggregate body, that is, in their *Communia Concilia*, or Parliaments.

And with this agrees the Statute of Provisors, *An. 25 E. 3.*

which saith, *Whereupon the said Commons have prayed our Sovereign Lord the King, that upon the mischiefs and damages which happen to his Realm, he ought and is bound by his Oath, with the accord of his people in his Parliament, thereof to make remedy and law, and removing the mischiefs and damage which thereof ensue. (And this they say) sith the right of the Crown of England, and the Law of the Realm was such.*

Nor indeed can I apprehend any colourable pretence, much less a probable reason, that if the Barons had *49 H. 3.* usurped the Sovereign power into their hands, they

Pulton's Stat. fol. 99. 25 E. 3.

It is considered and declared by the whole body of this Realm now represented by all the Estates of the same assembled in this present Parliament, that the Kings Highness, before Almighty God, is bound as by the duty of a good Christian Prince, for the conservation and preservation of the good Estate and Common-wealth of this his Realm, to do all that in him is, to obviate, repress, and redress the said abuses and exactions of Annates, or First-fruits. *Apud Capell. Rotulor. Rot. Parl. 23 H. 8. n. 33.*

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they should 1. So easily and speedily divide and share it with the Commons, constitute a new Court of Parliament, and make them *essential* and *coordinate* with themselves in the Legislative Power: sure we know it is natural for all Courts, *ampliare & non diminuire Jurisdictionem.* 2. That at that Parliament the numerous Barons (as they stile them) should but summon 23. of their own Order, when the Archbishops, Bishops, Abbots, Priors and Deans, made 120, if we must be concluded by the Records. If there were then two Houses of Parliament, and that the Knights, Citizens, and Burgeses, did not sit with the Lords, the Prelates having so great advantage of the Temporal Lords in their Votes, were very unkind to the Crown they made not use of their overballance for the delivery of the King

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King and Prince, then said to be in Custody. 3. Nor have I yet met with any reasons given, why when the Government of the whole Kingdom was at this Parliament of 49 H. 3. to be settled after so long and bloody a War, the Barons being then so victorious and numerous, as our modern Authors say, they would by their absence hazard and endanger the loss of all by entrusting the Prelates and Commons with the over-balance. Many remarkable observations might be raised upon this Record, both as to the Lords and Commons, but I will now pass to my eight Argument, concluding this with M^r Prynn's opinion, how the Parliament Rolls before E. 3. came to be lost or destroyed. I will use his own words.

That there are no Records at all in the *Tower* (except some few ancient

M^r Prynn's Preface to S^t Robert Cotton's Abridgment of the Records in the *Tower*.

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tient Charters or Exemplifications
 of them) antienter than the first
 year of King *John*, all the rest from
William the first his Reign till then
 (except some few in the Exchequer
 not relating to Parliaments) being
 utterly lost, the first Parliament
 Rolls yet remaining are these, 5,
 8, 9, and 19th of King *E. 2.* the
 Statute Roll of *H. 3. E. 1. E. 2.*
 containing some Statutes made in
 their Reigns, a Parchment Book
 of some Pleas in Parliament during
 the Reigns of King *E. 1.* and *2.*
 and a few Bundles of Petitions in
 the Parliaments of *6 E. 1.* and
1, 2, 3, and 4 E. 3. none of which
 are here abridged (*viz. in the A-*
bridgment by him published) only I
 find in the Clause Patent Charter
 and Fine Rolls of King *John, H. 3.*
E. 1, and 2. some Writs of Sum-
 mons; and some memorials of
 Acts, Ordinances made, and Aids,
 Subsidies,

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Subsidies, Dismes, Quindisms, Customs granted in Parliaments, held during their Reigns, the Rolls whereof are perished and quite lost, either through the negligence of the Record Keepers, or the Injury, Iniquity of the times during the Civil Wars between the King and Barons, in the Reigns of King John and H. 3. and betwixt the two Houses of Lancaster and York, for the Title of the Crown, wherein (it is very probable) the prevailing King's parties, by their Instruments, imbezled, suppressed such Parliamentary Records and Proceedings, as made most against their Interests, Power, Prerogatives, Titles; or through the default of our Kings great Officers and Attornies, who sending for the Parliament Rolls out of the Tower, upon special occasions, never returned them again for rea-

F

sons

Rot. Parl. i H.
4. n. 8. Rex
Richardus fecit
Rotulos Parlia-
menti pro voto
suo mutari &
deberi.

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sons best known to themselves, by means whereof, those Parliament Rolls being no where to be found, their defects must be supplied only out of such fragments and memorials of them, as are extant in our other Records and antient Historians, especially in *Matthew Paris*, *Matthew Westm.* *William of Malmesbury*, *Henry Arch-Deacon of Huntingdon*, *Roger de Hoveden*, *Simeon Dunelmensis*, *The Chronicle of Brompton*, *Radulphus de Diceto*, *Ranulphus Cestrensis*, and *Thomas of Walsingham*, who give us some accounts of their proceedings and transactions, which else had been utterly buried in oblivion, as well as their Rolls wherein they were at large Recorded, as is evident by the Parliament Rolls yet extant.

The

The EIGHTH
ARGUMENT.

From the various opinions of the learned men in and since H. 8. who never dreamed of any such origine, nor was it ever heard of till of late.

IT would be tedious to set down the various and wandering opinions and reasons of our modern Authors in English, touching the beginning of our Parliaments, and constituent parts thereof, especially of the *Commons*, as now called and comprehended in the Knights, Citizens, and Burgeses in Parliament: I will but instance in a few eminent Authors, and leave the Croud behind.

The great Antiquary, Mr. Lam-

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Lamberd Ar-
chion. fol. 246.

berd holds, that they were before the time of *William* the First, and there are other learned men who give their assent to that as a great truth.

Prynns Truth
Triumphing
over Falshood,
Antiquity over
Novelty, fol.

69.

Parliamentum
Synodus mag-
na nuncupatur
Somneri Gloss.

Mr. *Prynns* saith, By all the ancient *Presidents* before the Conquest, it is most apparent, That all our *Pristine Synods* and *Councils* were nought else but *Parliaments*; that our *Kings*, *Nobles*, *Senators*, *Aldermen*, *Wisemen*, *Knights* and *Commons*, were usually present, and voting in them as *Members* and *Judges*.

Polydore Virgil, *Hollinshead*, *Speed* and *Martin*, are of opinion, that the *Commons* were first summoned at a *Parliament* at *Salisbury*, *An. 16 H. 1.*

Sir Walter Raleigh in his *Treatise* of the *Prerogative* of *Parliaments*, thinks it was *Anno 18 H. 1.*

My

an Essential part of Parliament. 69

My Lord Bacon in a Letter to the Duke of Buckingham, asks, Where were the Commons before *H. 1.* gave them authority to meet in Parliament?

*Cabala fol. 65.
An. Dom. 1621.*

Dr. Heylin finds another beginning, and saith, that *H. 2.* who was Duke of *Anjou*, was the first Institutor of our High Court of Parliament, which (being an *Anjo-vian*) he learned in *France*.

Heylins Description of the great World, fol. 464. Im-press. 1627.

But I cannot find that any of those ever supposed the Commons were first introduced in Parliament 49 *H. 3.* by *Rebellion*.

Nor was this opinion entertained by any Author I can meet with, Anno 1529. 21 *H. 8.* for in an answer of that great and excellent person Sir Thomas More, Lord Chancellor of England, in his supplication of Souls against the supplication of Beggars, discoursing about King *Johns* making (in the

Sir Thomas More's Works, fol. 296.

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14th year of his Reign, and three years before his granting *Magna Charta*) the Realm Tributary to the Pope, declares his Judgment without any doubt or hesitation, and therein as I take it the universal tradition and belief of all learned men of that and precedent times:

That the Clergy and all the Lords and *Commons* of the Realm made the Parliament in the age of King *John*, and that never could any King of *England* give away the Realm to the Pope, or make the Land Tributary without their grant; whose Book, and so his opinion we find approved of and published by a grave and learned Judge of the Kingdom, Mr. Justice *Rastall*, and dedicated to Queen *Mary* her self, *An.* 1557. not much above a Century ago.

Willielmus Rastall
 Serviens ad
 legem constitutus
 Justic. de
 Banco. Teste
 Rege apud
 Westm. 27 Octo-
 br. Rot. Par. 5
 & 6 P. & Mar.

The

The NINTH
ARGUMENT.

From the comparison of the antient Generale Concilium, or Parliament of Ireland instanced An. 38 H. 3. with ours in England, wherein the Citizens and Burgeses were, which was eleven years before the pretended beginning of the Commons here.

AS great a right and privilege surely was and ought to be allowed to the English Subjects as was to the Irish before 49 H. 3. and if that be admitted, and that their *Commune Concilium*, or Parliament, had its *Platform* from ours, as I think will not be denied by any that have considered the Histories and Records touching that Land, we shall find the two

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ensuing Records, An. 38 H. 3. clearly evince, that the Citizens and Burgeses were then a part of their great Council or Parliament.

Rot. Pat. 38 H.
3. m. 4. Hi-
bernia.

Rex J. Ric.
Cancellar. &
Thesaur. nostris
Hibern. &c.
Volumus & vo-
bis mandamus
quod unum Par-
liamentum sive
Magnum Consilium. Claus.
4. E. 3. m. 6.

That King being in partibus transmarinis, and the Queen being left Regent she sends Writs in the Kings name directed Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, liberis hominibus, Civibus & Burgensibus terre sue Hibernie, telling them that mitimus fratrem Nicholaum de Sancto Neoto, fratrem Hospitalii Sancti Johannis Jerusalem in Anglia ad partes Hibernie ad exponendum vobis (together with I. Fitz Geffery the Kings Justice) the State of his Land of Vascony endangered by the hostile invasion of the King of Castile, qui nullo jure sed potentia sua confisus terram nostram Vasconie per ipsius fortitudinem a manibus nostris auferre

an Essential part of Parliament. 73

ferre & à Dominio Regni Angliæ se-
gregare proponit. And therefore
universitatem vestram quanta possumus
affectione rogantes quatenus nos & jura
nostra totaliter indefensa non deferentes
nobis in tanto periculo quantumcunq;
poteritis de Gente & pecunia subve-
niantis, which would turn to their
everlasting honour, concluding
his nostris angustis taliter compatiētes
quod nos & heredes nostri vobis & hæ-
redibus vestris sumus non immerito ob-
ligati. Teste Regina & R. Comite
Cornubiæ apud Windesor, 17^o Die
Februarii, per Reginam.

The other Writ somewhat va-
ries, being a Commission touching
the Chief Justice Fitz Geffery, to
be as an Assistant or Co-commission-
ner with Father Nicholas, to hold
the Parliament, to declare to them
the State of Gascony, & pericula nobis
imminentia, & ad tractandum vobis-
cum super auxilio nobis faciendo, against
the

Inquisitio facta
ad Parliamen-
tum de Tristel
Dermond die
Mercurii prox-
ima post Festum
Sanctæ Trini-
tatis An. 48 H.
3. Coram Do-
mino Ricardo
de Rupella Ca-
pituli Justicia-
rio Hiberniæ
& coram Domi-
no Hugone de
Tachmone E-
piscopo Midenfi
tunc Thesauri-
ario, &c. Ex Re-
gistro Archie-
piscopi Dubli-
ensis. Parlia-
ment in Ire-
land, An. 48
H. 3.

ibidem.

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the King of *Castile*, desiring they would give Faith to what the Chief Justice should say to them there-upon.

Rot. Pat. 5 E.
1. m. 13.

Rot. Pat. 5 E. 1. m. 13. we read: *Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Militibus, & omnibus aliis Anglicis de terra Hiberniæ, &c. vobis mandamus quod ad certos dies quos ad hoc provideritis, videlicet citra Festum Nativitatis beate Mariæ Virginis, in aliquibus locis opportunis conveniatis, & diligentem tractatum inter vos habeatis, utrum fuerit præjudicio vestri & libertatum & consuetudinum vestrarum, that the meer Irish should use and enjoy the same Laws and Customs in common as the English there, and to send their Judgment and Counsel, under the Seal of the Justice of Ireland. And in the twentieth Year*

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Year of this King, *Magnates & probi homines Terræ Hiberniæ quintamdecimam partem de bonis & catallis suis concesserunt gratiose* to the King, which certainly was done in the *Generale Concilium*, or Parliament, and that the general phrase (*probi homines*) did include and comprehend the *Citizens* and *Burgesses* to be part of that General Council, for *Rot. Claus. 7 H. 3. m. 7. dorso*, the *Citizens* of *Dublin* are called *Probi homines nostri Dublyn*.

Rot. Pat. 28 E.

1. m. 15. De

15³ Regi in Hi-

bernia concessa

taxand.

Inhibitio ne qui

Magnates, vi-

delicet Comes,

Baro, Miles, seu

aliqua alia no-

tabilis persona

transseat ad par-

tes transmarina-

nas. Rot Claus.

3 E. 2. m. 16.

19. dorso.

From hence may be observed,

1. That by the Patent Rolls of 38 *H. 3.* the *Citizens* and *Burgesses* were summoned to meet at the great Council or Parliament, as well as the Prelates, Earls, Barons, Knights, and Free-holders, and equally desired to give the King a *Subsidy* of men and money.

2. That though in the Writ of *E. 1.* the *Citizens* and *Burgesses* are

are

The Commons of England ever are not mentioned *eo nomine*, the phrases of directions in Writs being in those Ages very various, sometimes more general, and sometimes more particular ; yet the words *omnibus aliis Anglicis* after *Baronibus & Militibus*, must comprehend the *Citizens* and *Burgesses*, who were to meet and diligently to treat with the Archbishops, Bishops, Abbots, Priors, Earls, Barons, and *Knights* and *Freeholders* ; whether it would be in prejudice of their Liberties and Customs, if the *meer Irish* should enjoy the same Laws and Customs as they of the English extraction did, and they were to join in giving their judgment and counsel with the rest of the Parliament. And reason it self speaks it, since the admission of the *meer Irish* into equal priviledges and rights with themselves in their *Cities* and *Towns*, would be of so great

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great a consequence to them; for upon the Kings granting by Charters to several Irish Families, the benefit of the English Laws, great disputes arose, so that *Rot. Claus.* 10 *E. 2. m. 28. intus*, upon a Petition to the King, he granted that *semel in anno teneatur* Parliamentum to redress their grievances touching the Irish and English Laws, and so the word *Parliamentum* ascertains what those Councils were in the Patent Rolls of 38 *H. 3.* and 5 *E. 1.* before-mentioned.

And now I will close my Arguments, declaring under the good favour of so eminently learned Authors, that their resolves and opinions which they have published to the World, that the inception and original Election of Knights, Citizens, and Burgesses, or the admission of the *Commons of England* (as now phrased) into Parliament
by

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by Rebellion and Treason, *Anno*
 49 *H. 3.* are not at all satisfactory
 and convincing in my judgment,
 unless they give more certain and
 greater testimonials than yet I have
 met with, and answer these few Re-
 cords against their so severe *Position*.
 A *Position*, believe me, that like a
 tempestuous Whirlwind, not only
 rends off and dismembers an essen-
 tial branch, but shakes the very
 Root of the right and honour of
 our English Parliament, and equal-
 ly wounds both Lords and Com-
 mons, because these learned Au-
 thors themselves do agree, that
 there is not yet discovered any for-
 mal Summons of the great Lords
 (no more than of the Commons)
 to any Parliament before the said
 49 *H. 3.*

And here I must beg the favour
 of the Reader of adding a *supple-*
mental Argument, which at first I
 confess

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confess was not intended, and it is this.

If in the General Councils, or, in our present Dialect, Parliaments, for instance, 1. Of France, 2. Spain, 3. Portugal, 4. Denmark, 5. Sweden, and 6. Scotland, the Cities and great Towns or Boroughs, have from time immemorable, both de jure and de facto, had their Delegates or Representatives:

Upon what authority or reason can it be believed, that so universal a Northern Custom or Law, did not obtain and was never practised in England before 49 H. 3?

1. **F**OR France we find their Paulus Amilius Hist. Franc. Lib. 9. Conventus ordinum, or L'as-
semblee des Estates, consisted de Sacerdotio, Nobilitate & plebe, of the Clergy, Nobility and Commons, this
is

Rot. Parl. 9 H.

5. n. 14. Pars

1^a. Approbatio

pacis inter Reg-

na Angliæ &

Franciæ nuper

concluse.

Rot. Parl. 11 H.

7. n. 40. in

consimili forma.

The last of

which, being

the Citizens

and Burgeses,

appeared by

their Repre-

sentatives or

Delegates.

is evident by the Parliament Roll

9 H. 5. which takes notice of the

peace made between England and

France, that the same was confirm-

ed in France, per tres Status regni,

viz. Prælatorum & Cleri, necnon Pro-

cerum & Nobilium ac etiam Civium,

Burgensium, Civitatum, Villarum

& Communitatum dicti Regni Fran-

corum, ipsi tres Status eandem pacem

& omnia & singula contenta in eadem

APPROBARUNT, LAUDARUNT, AC-

CEPTARUNT & AUCTORIZARUNT.

It seems by this that the French

Kings were not so despotical and ab-

solute by the fundamental Laws of

that Kingdom, as their Successors

have by acts of power since made

themselves.

2. In Spain their Curia or Cortes

del Reyno, is compounded (as Dr.

Heylin cites out of the learned Bo-

dim) of the Clergy, the Nobility,

and the Commissioners of the Pro-

vinces and antient Cities.

3. The

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3. The *Portugal Cortes* or Parliament consists of the Bishops and Prelats, the *Nobiles majores*, & *minores*, and two *Procurators* or *Burgesses* from every City, who have a deliberative voice, which they call definitive.

The Portugal History. Im-press. An. 1677. pag. 279.

4. In *Denmark*, *Pontanus* saith, the Bishops, the Nobility, & *Civitatum Delegati*, the Deputies or Commissioners of Towns and Cities, made up their *General Council*.

Pontanus in Historia verum Danicarum. Lib. 7.

5. For *Sweden*, it does not much differ from the Government and form of *Denmark*, their Common Council consisting of the same Estates and degrees of people, that is to say, *Procures* & *Nobiles*, the greater and the less Nobility, *Episcopi* & *Ecclesiastici*, *Civitates* & *Universitates*, the Cities, Boroughs and Villages.

Thuanus Hist. Lib. 131. fol. 1108. Tom. 9.

I might here if it were needful,

G

shew

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shew how great a share and interest the *Hanze* or free Towns in *Germany* have by their Deputies in all Ages had in the Diet or General Council of the Empire.

Regiam Majestatem Scotiz.

6. But now at last we are come to Scotland, Sir John Skene in his Epistle Dedicatory to King James, before his Scottish Laws, writes thus. *Intelligo tuas tuorumq; Majorum Leges quæ cum Legibus Regni tui Angliæ magnâ ex parte consentiunt;* and then in his Book shews, that *Wilhelmus cognominatus Leo*, who as is said, begun to Reign in 1105. and reigned 49. Years, so as he was King of Scotland 5¹⁰ of our Henry the first, held his Assise or Parliament at Perth, where several Laws were ordained; to the observance whereof, *Episcopi, Abbates, Comites, Barones, Thani & tota Communitas Regni tenere firmiter juraverunt.*

Apud eundem Statuta Wilhelmi Regis, pag. 3. cap. 7.

King

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King Alexander began to Reign *ibidem Statuta Alexandri Secundi, pag. 22. cap. 2.*
Anno 1214. which was the sixteenth Year of our King John, and Reigned 35. Years, so as he died *an. 38 H. 3.* he made his Laws de Consilio & assensu venerabilium Patrum Episcoporum, Abbatum, Baronum ac proborum hominum suorum Scotiæ. And what the Communitas Regni in King William's Statutes, and the probi homines in King Alexanders, were, the League made between the French King and the Crown of Scotland, *Anno 28 E. 1.* clearly shews, being ratified and confirmed in their Parliament, *per Johannem de Balliolo,* then King, ac Prælatos & Nobiles & Universitates & Communitates Civitatum & Villarum dicti Regni Scotiæ; and the constant practice ever since hath been, that the Cities and Boroughs have sent their Proxies or Representatives to the Parliaments of that Kingdom.

*Rot. Pat. 15
 Johannis pars
 2. m. 2.
 Rex probis ho-
 minibus Exon.
 Worcestre.
 Hunt. Bristol.
 &c.*

*Ex Rotulo in
 Turri London.
 28 E. 1.*

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It may therefore seem very strange, that when the Cities and Boroughs in all the Kingdoms of Europe, *de jure* and *de facto* were *ab antiquis temporibus*, even in times coeval with the Government, an essential part of their *Common Councils* or *Parliaments*, that England should not be under the same constitution, being but descendants from Gaul, or the more Northern Countries; if so,

1. Was it because in the Britton, Saxon and Norman times, there were no Cities or Boroughs, or if there were, were they so poor and inconsiderable, as they deserved no observation in the eye of the State? or,

2. Was it because, by a strange and unheard of fate, peculiar and proper only to them, they were not fit or capable to give or hear reason, as well as the *Delegates* or
Repre-

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Representatives of the Cities and Boroughs of France, Spain, Portugal, Denmark, Sweden and Scotland? or,

3. Had they no property or right in their Estates? Certainly, in my opinion, none of these Objections can be admitted, allowed, or proved; for

In the Brittons time, venerable Beda Eccl. Hist. lib. 1. cap. 1. Bede tells us. *Erat Britannia viginti*

& octo Civitatibus quondam Nobilissimis insignita præter Castella innumera, quæ & ipsa muris, turribus, portis ac feris erant instructa firmissimis. Nor

were they of less reputation in the Saxon or Norman times, when they were thought so necessary and proper for the safety of the Government, preservation and defence of the Laws, that it was ordained by

William the First, and the Common Leges & de prædictis Anglorum Legibus pag. 171. Inter leges Guillelmi primi, cap. 61. Council of the Kingdom; That no Market or Fair should be permit-

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ted to be held, *nisi in Civitatibus Regni nostri & in Burgis ubi consuetudines Regni & Jus Commune & dignitates Coronæ nostræ deperiri non possunt nec defraudari nec violari, sed omnia recte & in aperto & per Judicium & Justitiam fieri debent, &c. ad tuitionem gentium & populorum regni & ad defensionem Regni.* And if in the Brittons times the Nation was so strong in Cities and Castles, surely it cannot be imagined but that in the Saxon and Norman times, when the Nation became to be more civilized and considerable in the World, the Estates or Degrees of the Inhabitants would easily part with these Liberties and Priviledges, which their Ancestors, though less knowing and powerful, did claim and enjoy.

*Populi omnes
ad Aquilonem
positi libertatem
quandam spi-
rant. Eod. de
Republ. Lib. 1.
cap. 3.*

Having thus concluded my Arguments against the Position of 49
H. 3.

H. 3. I have thought it not altogether impertinent, to add some brief *Observations* for the better understanding of antient Records, and Historians in their various *Lecti- ons* and different expressions. I shall therefore consider,

1. *The different application of the words Commune, Communitas, or Plebs.*
2. *The several Denominations by which our antient General, or Common Council or Parliaments, were expressed.*
3. *The various acceptation of the word Baro, and that under the Phrase of Baronagium Angliæ, both Lords and Commons were comprehended.*

Observation I.

The different application of the words
Commune, Communitas, or
Plebs.

Objection.

Eum ego Plebeium voco, quem leges nostrae hominem legalem appellant, saith a learned man, a Lawyer and Privy Counsellor to the famous Queen.

Too. Smit's de Repub. Angl. lib. 1. cap. 23. fol. 43. De plebeis.

And the Archbishops Question to the King in the Coronation Oath

runs, Si leges & consuetudines ab antiquis iustis & deo devotis Regibus Plebi Anglorum concessas. Totilli Magna Charta, fol. 164.

Answer.

Admitting the Objection true (which I conceive otherwise) yet it is no Conclusive Argument, for before the Statute *An. 3 R. 2. cap. 3.*

I can-

Rastall's Stat. pag. 135. cap. 3.

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I cannot find the appellation of *Lords Temporal*, nor before the 13th of that King *cap. 2.* the phrase *Lords Spiritual and Temporal* in our *ibid. pag. 156.* Printed Statute Books; *Ergo*, from thence it follows by a necessary consequence, according to their Argument, that they were not any part of the *Generale Concilium*, or *Parliament*, before those times, because not expressed by that name. I suppose this Conclusion will not be admitted true.

But as I am well satisfied, that the Archbishops, Bishops, Abbots and Priors, who were often expressed by, and comprehended in the word *Praelati*, and who in after times constituted the *Lords Spiritual*, and the Earls and Barons, as now differenced, the *Lords Temporal*, were *ab antiquo* undoubtedly a part of the *Commune Concilium Regni*, or *Parliament*; so it may be proved
if

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if insisted upon, That the *Milites* and *libere tenentes de Regno* or *Anglia*, the *Knights* and *Gentlemen*, or *Freeholders* of *England* (*licet nonnunquam diversis & variis appellationibus expressi & inclusi*, in which those *qui de Rege tenuerunt in capite*, or *Barones Regii*, or *Regis*, to difference them from the *Barones Regni*, were comprehended) were à *Crepusculo temporis*, à constituent and essential part also, although by *Historians* and *Records* they are often mentioned by, and included in titles, which in late times import more honour, and are now of an higher acceptation, and had not the name of *Commons* fixed, or generally stamped upon them as in after Ages. *Sed hæc obiter.*

Regis Antiqui
cùm in *Chartis*
mentionem fa-
ciant de *Baro-*
nibus, sepe sub-
jungunt, posses-
sorum meorum vel
nostrorum, id est *Re-*
gios Barones sic
distinguant à
Baronibus, *Epi-*
scoporum, *Comi-*
tum, *Abbatum*,
&c. *Spelm.*
Gloss. Tit. Baro
fol. 69.

Anno 3 H. 3.
Fitz-Herbert
Abridgment.
Tit. Prescrip-
tion 56. fol.
102. Rot.
Claus. 24 H. 3.
m. 10. Pro
Hawisia quæ

fuit uxor *Johannis filii Alani*. *Glanvile lib. 8. cap. 11.* Et hoc debet *Domini-
nus Rex de jure Baronibus suis*, scilicet quod ob talem causam possunt sui *Baro-
nes Curias suas sic in Curiam suam ponere.*

an Essential part of Parliament. 91

1. As to the word *Communes* (or *Observation.*
Communitas) I have in my enquiries
observed it to be used in six senses.

1. To comprehend the whole
Commune Concilium Regni, or Parliament.

A le commune Dangleterre : Here
Commune is taken for people, so as tout
le *Commune* is here taken for all the
people, and this is proved by the sense of
the words, for *Magna Charta* was
not granted to the Commons of the
Realm, but generally to all the Sub-
jects of the Realm, viz. to those of the
Clergy, and to those of the Nobility;
and to the Commons also. And that
[*Commune*] in this place signifieth
people, it is proved by the preamble, for
there the great Charter and the Charter
of the Forest, are rehearsed to be gran-
ted by King H. 3. to his people, and

Coke 2. Instit.
fol. 539. *Arti-
culi super Char-
tas, cap. 1.*

Note, before
9 H. 3. *Magna
Charta* was
granted and

confirmed several times. Rot. Pat. 1 H. 3. n. 13. Rot. Claus. 2 H. 3. m.
11. dorso. Of which last there are several ancient transcripts. MS. penes
prænobilem Will. Pierpont. MS. penes Sam. Baldwin Militem Servientem
Domini Regis ad Legem. MS. penes Johannem Cook gen. de interiore Templo.
MS. penes meipsum. 3 H. 3. Hist. Ecclesiæ Angl. apud Foxum Vol. 1. pag.
335. Ex MS. Domini Scales. Rot. Pat. 3 H. 3. m. 6.

here

The Commons of England ever here they are said to be granted [A le Commune] and see before 25 E. 1. Confirm. Chart. cap. 1. & cap. 6. for this word Commune and Communitie : so as [A le Commune] here signifieth not to the Commons of the Realm, but to the people of the whole Realm; and herewith agree our Books, for that a common nuisance which concerns le commune ou le communitie, le suite serra done au Roi, where [commune] and [communitie] include all the Kings Subjects.

Rot. Pat. 48

H. 3. Pars 1.

m. 8. dorso n.

10.

2. To comprehend the Communitas Prælatorum & Baronum.

3. To comprehend the generality of all that came to Parliament, after the particular enumeration of the Orders of the great Lords, viz. Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones.

Coke 2. Instit. fol. 156.

Rastall's Stat.

12 E. 2. fol. 59.

The Statute of Westm. 1. made 3 E. 1. eleven years after 49 H. 3. saith,

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saith, per l'assentements des Archev^{es}ques, Evesques, Abbes, Priors, Counts, Barons, & tout le Comminalty de la terre illonques summones.

The Statute, de asportatis Religio-
forum, 35 E. 1. though made Anno
34^o saith, That Dominus Rex post
deliberationem plenariam, & tractatum
cum Comitibus, Baronibus, & aliis Nobi-
libus & Communitatibus Regni sui
habitum in præmissis de consensu eorum
unanimi & concordi, ordained, That it
should be observed: but upon the
producing the Roll in the Parlia-
ment 17 E. 3. it is said, That the
Petition for the Statute was per
Countes, Barones & Communes du Roy-
alme, and so under the word Com-
munes, the alii Nobiles are inclu-
ded.

Statutum de as-
portatis Religi-
osorum, 35 E. 1.
Placita Parl.
fol. 314. Coke 2.
Instit. fol. 580.

4. The *Communitas Comitatum*
Regni, or Universality of the Coun-
cis concess. ann. Regni sui Octavo, apud Clericum Pipe. Ibidem consimile anno
septimo. Consimile anno nono. *Communitas Comitatum*. Placita Parl. pag.
416, 417.

Rot. de xx^o &
xv^o. Regi Ed.
secundo apud
Westm. à Lai-

ties

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ties of the Kingdom represented by the Magnates, Chivalers, or Grandz of the Counties; of which appellations I shall give some few instances.

Rex &c. quia ex querela multorum intelleximus, quod nonnulli Magnates, Cives & Burghenses & alii in libertatibus suis à Progenitoribus nostris

& nobis eis concessis easdem libertates frequenter excedunt, & sub velamine libertatum illarum pluribus dampna non modica de die in diem inferunt.
Rot. Claus. 2 E. 1. m. 3. De libertatibus in manu Regis redinend.

Inter communia Brevia de Terminis Sanctæ Trin. S. Mich. anº 34º E. 1. penes Rememoratorem Domini Thes. in Scaccario, The Milites Comitatum and Barones Quinque Portuum, are called Magnates.

Rot. Claus. 3 E. 2. m. 16. dorso. Inhibitio ne qui Magnates, viz. Comes, Baro, Miles, seu aliqua alia Notabilis persona transeat ad partes transmarinas.

Ex libro Statutorum Impress. lingua Gallica penes meipsum, 15 E. 3. Cap. 4. Rastalls Stat. pag. 85. Item que les Prelats, Countz, Barons, Chivalers & autres Grandes de chescun pais.

Statutum

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Statutum de servientibus 25 E. 3.
per assent de les ditz Prelatz, Countes,
Barones, & autres Graundes de la dite
Communalte illonques assemblez.

MS. penes meipsum. Stat. 27
E. 3. *Statutum Stapule*. Grantz des
Counties.

5. Applied to the Communi-
ties or Societies of the Cities and
Boroughs.

Rot. de Superioritate Regis An-
glie in Regno Scotie, Anno 19 E. 1.
Omnes & singuli tam Episcopi & alii
Ecclesiarum Prelati, quam Comites, Ba-
rones, Magnates, Proceres Civitatum
& Burgorum Communitates.

Rot. Parl. 17 E. 3. n. 8. Chivaliers
des Countees & Communes.

Rastall's Stat. 27 E. 3. fol. 102.
Statute Staple, whereas good delibe-
ration had with the Prelats, Dukes,
Earls, Barons, and Grandes des Coun-

*Ex veteri libro
Statutorum in
lingua Gallica penes meipsum.* Nota, The Ordinances of the Staple were
made by a great Council, but confirmed and made a Statute in the Par-
liament, 28 E. 3. Cap. 13.

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tees de chescun Countee un pur tout le Countee, and of the Commons of the Cities and Boroughs of our Realm of England.

6. To the Commune or generality of the body of the Clergie in Parliament.

Ex Bundell.
Pct. Parl. 8.
R. 2. n. 1, 2.
Rot. Parl. 25 E.
3. n. 69.

Monstre la Commune de la Clergie, & per la ou diverses Abbes, Priores, Es- glises Cathedrales & Collegiates, & autres gentz de Seinte Esglise ount diverses rentz.

Obfer-

Observation II.

2. *The several Denominations by which our antient General, or Common Council, or Parliaments, were expressed.*

IF any man will be at the expence of so great a charge and trouble, as to compare the *various lections* of *Historians* and *Records* together, and the manner and phrase of words and speeches, proper to particular ages and times, he may satisfie himself what those Councils were, and their *constituent parts*, whom the antient *Historians* mean, when they say,

Convocati, or Congregati fuerunt

Nobiles Angliæ.

H

Omnes

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Omnes Regni Nobiles.

Nobilitas est duplex, superior & inferior.

Nobilitas totius Regni.

Coke 2. Instit. fol. 583.

Tota Nobilitas Angliæ.

*Nobiles minores sunt Equites si-
ve Milites, Ar-
migeri & qui
vulgo Generosi
& Gentlemen
dicuntur.*

Totius Angliæ Nobilitas.

Camd. Brit. fol. 123.

Magnates Angliæ.

*Mills de Nobili-
tate politica
& civili, fol.
42, 43.*

Totius Regni Magnates.

Proceres Regni.

Proceres & fideles Regni.

Universitas totius Angliæ Nobilium.

Universitas Regni.

Barones Angliæ Terræ or Regni.

*Nobilitas cau-
satur ex loco,
quoniam Civis
ex urbe splendi-
da oriundus no-
bilis est. Chaf-
seneus Catalo-
gus Gloriæ
mundi, Pars 8.
confid. 18.*

Universitas Baronagii, or Barnagii Angliæ.

Baronagium, or Barnagium Regni, or Angliæ.

Regni totalis universitas.

*Causatur etiam
ex clericatura,
eo quod quis est
clericus effici-
tur Nobilis.*

Pontifices & Principes Anglicani.

Ib. Confid. 26.

Primordēs & Magnates Regni.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Principes Regni, Præsules & Principes Regni.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Optimates totius Regni, or Angliæ.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Primates Regni.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Majores Regni, Majores Angliæ.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Assisa Regni.

*Præcipuos Ur-
bium, Vicorum
& Castellorum
Magistratus*

Discretio

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Discretio totius Regni.

Generale Placitum.

Clerus & Populus.

Communitas Regni.

*Generale Concilium Regni. Concilium
Regni.*

And such like expressions and phrases, varying in several Ages, till at last they fixed on the word *Parliamentum*.

To demonstrate all which will require a longer discourse than I here intend; however, having before touched upon the *Parliaments* of 17 *Johannis*, and 37 *H. 3.* I will give instances how they have been named in *Records* and *Histories*.

Anno 17^o Regis *Johannis*.

i. *Archiepiscopus Cantuariensis, Episcopi, Barones & Magnates.*

H 2

2. *Gene-*

*Ex vetusto
Chronico MS.
in Bibliotheca
Bodleiana in-
ter Codices
Wilhelmi Ar-
chiepiscopi Can-
tuariensis.*

- Rot. Pat. 17
Joh. m. 17. dor.
- Rot. Claus. 17
Joh. m. dorfo.
- Rot. Claus. 17
Joh. m. 23. dorfo.
- Mat. Paris. A.
Dom. 1215.
- pag. 255. l. 39.
Mat. Paris. pag.
255.
2. Generale Concitium.
3. Barones & liberi homines totius Regni.
4. Barones & liberi homines Domini nostri.
5. Magnates.
6. Fuerunt autem quasi ex parte Regis Stephânus Cantuariensis & H. Dublinensis Archiepiscopi, &c. illos quoq; qui ex parte Baronum affuerunt qui innumerabiles fuere, non est necesse numerare, cum tota Angliæ Nobilitas in unum collecta quasi sub numero non cadebat.
- Mat. Westm.
p. 273. l. 48.
- Claus. 28 H. 3.
- Pars unica, m.
12. dorfo.
- Ibidem.*
- Mat. Paris. p.
920. l. 32.
- 40 H. 3.
- Rot. Parl. 15
E. 3. n. 50.
dorfo. *Pulton's*
- Stat. 15 E. 3.
Cap. 1. pag. 81.
7. Barones.
8. Parliamentum.
9. Barones Angliæ.
10. Baronagium Angliæ.
11. Enprimes est accorde & assentu q' le franchise de seinte Esglise & la grand Chartre & la Chartre de la Forest & les autres Statutes faitz per nostre dit Seignour le Roy & ses Proge=

an Essential part of Parliament. 101

Progenitors Piers & la Commune
de sa terre.

Anno 37^o H. 3.

1. Tota Nobilitas Angliæ.
2. Parliamentum.
3. Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, & alii Magnates Regni Angliæ.
4. Magnates & Communitas Populi.
5. Anno 1253. 37 H. 3. Hoc anno H. Rex Angliæ ad instantiam Prælatorum, Comitum & Baronum Cartas duas eis concessit, unam de libertatibus quæ Magna Charta dicitur, & alia quæ dicitur de Foresta, pro qua concessione Communitas Angliæ concessit Regi quintam decimam partem omnium bonorum suorum mobilium per totam Angliam.

Baronagium.

Mat. Paris. An.
1253. 37 H. 3.
fol. 865. l. 43.
Mat. Westm.
fol. 302. l. 58.
Fleta lib. 2. cap.
42. De sententia
super Statutum.
fol. 93.

Rot. Pat. 37 H.
3. m. 12. dorso.

Ex vetusto Chronico MS. in
Bibliotheca
Bodleiana inter
Codices Willi-
elmi Archiepi-
scopi Cantuar.
4. K. 84.

Mat. Paris. fol.
970.

H 3

In

Mar. Paris. pag.
970. l. 45. 53.
an. 42 H. 3.

In the Parliament at Oxford 42

H. 3. *Parlamento autem incipiente solidabatur Magnum Propositum & Consilium immutabile exigendo constantissime ut Dominus Rex Cartam Libertatum Angliæ quam Johannes Rex pater suis Anglis confecit & confectam*

Nota, King
John swore to
observe *Magna*
Charta, and the
Barons did
him homage.
Rot. Pat. 17
Joh. pars unica
m. 23. n. 3.

concessit, quamq; idem Johannes tenere juravit, fideliter teneat & conservet, quamq; idem Rex Henricus multoties concesserat & tenere juraverat, ejusq; infractores ab omnibus Angliæ Episcopis in præsentia sua & totius Baronagii horribiliter fecit excommunicari & ipse unus fuerat excommunicantium. So as the *Excommunication* here meant, being that of 37 H. 3. then made in the presence of the King, Great men, and *Communitatis Populi*, is here said to be done in *præsentia totius Baronagii Angliæ*. And for the Honour of *Magna Charta*, I will conclude this head with an Act of Parliament. That Valiant and great Prince,

an Essential part of Parliament. 103

Prince, E. 4. after the overthrow of his Enemies, and peaceful possession of the Crown, assisted with the Judges of *England*, Archbishops, Bishops, Abbots, Priors, his Dukes, Earls, Viscounts, and Barons, with the *great men* or *Knights* of the *Counties*, and *Commons* in full Parliament, hath left this recorded to Posterity. They call this great Charter the *Laudable Statute* of *Magna Charta*, which Statute was made for the great *weakth* of this *Land*, upon which *Magna Charta*, the great Sentence and *Apostolique* Curse, by a great number of Bishops, was pronounced against the breakers of the same; and the same Sentence is four times in the year openly declared, according to the Law of Holy Church; and in affirmation of the said Statute, of the said great Charter, divers Statutes have been made and ordained.

Rot. Parl. 12

E. 4. n.

Rassall's Stat.

12 E. 4. cap. 7.

The Commons of England ever

And great reason certainly they had to put so high a value on that so famous *Charter*, since the *substantial* part of the *Laws* thereof were no less than the great *results*, *decrees*, and *judgments*, ordained by the prudence and justice of the *Brittish*, *Saxon*, and *Danish* *Dynasties*, founded upon two grand and principal Bases or Pillars, *Liberty* and *Property*, which like those two brazen ones called *Boaz* and *Jachim*, supporting the Temple of *Solomon*, upheld the tottering Frame and Fa-brick of our antient Government, though often by *evil men* designed to be *overthrown*.

Preface to
Coates 2. Inst.
Moore's Rep.
 797. per Po-
 pham.
 Mat. Paris 839.

A *Charter*, *empta & redempta*, purchased and redeemed with vast treasure of the *Nation*, and the effu-sion of a Sea of *Christian blood*. A Law published and established with fearful execrations, and terri-ble Curses, against the *infringers* and

an Essential part of Parliament. 105

and *breakers* thereof, and all done with that religious solemnity, and profound Ceremony, as it may seem inferior only to that of the Commandments of Almighty God given to the Jewish Nation.

All great Ministers of State and Justice were at their entrance into their Offices, solemnly to swear the observation thereof, and great reason there was for the making of this Law, both for the preservation of the *King*, and also the *Kingdom*; for that *Parliament* well knew the woful confusions in the Reign of *Edward the Second*, who being seduced by his two Minions the *Spencers*, for want of observing the good old *Laws* and *Customs* of *England*, cut off the head of *Thomas* Earl of *Lancaster* his Uncle, that being the first act of shedding the sacred *Royal blood* by colour of Law I ever met withal in History; they usurped
Royal

Rot. Parl. 15
E. 3. n. 10. 37.

Royal Power, they sent the *Queen* and *Prince* (afterwards great *Edward* the Third) beyond Sea, and prevailed with *E. 2.* to declare the *Queen* and *Prince* Traytors. They Monopolized the *Kings Eyes, Ears,* and his whole *Understanding*, so that the *King* nothing did, or would do, but what they did counsel him, were it never so great wrong; and if any had the courage to complain against them, or so much as fetch a loyal sigh, or lament the hard fate of the *King* then imposed upon by those *Favourites*; they were branded with arraighning the Government, striking at the foundation of State, and being guilty of Treason, and what not.

*Rast. Stat. 1 E.
3. pag. 64, 65.*

The consequences of whose unhappy Counsels and Policies, are too well known in History to have been the ruine both of the *King* and themselves.

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an Essential part of Parliament. 107

The *Priests* and *Confessors* were strictly commanded to frame and direct the Consciences of the people to the observation and obedience of the *Great Charter*, and they did so, not like the *Sibthorps* and *Manwarings* of later times, who by their *Flatteries* of Prerogative for their own promotion seek to ruine the *Subjects* property.

Pupilla oculi,
fol. 50. cap. 22.
De sententia
lata super Mag-
nam Chartam.

Obser-

Observation III.

The various acceptation of the word Baro, and that under the phrase of Baronagium Angliæ both Lords and Commons were comprehended.

Observation 3.
Camd. Britan.
fol. 121. Selden's Titles of Honor, in 4^{to}.
Parte 2^{da} fol.
273.

AS to the word *Baro*, it was not much more in use before *William I.* obtained the English Diadem, that I can find, than the word *Communes*, *Baro Britannij pro suo non agnoscunt in Anglo-Saxonicis legibus nusquam compareret nec in Africi Glossario Saxonico inter dignitatum vocabula habetur.* For the English Saxons called those in their own Language *Ealðepmen* which in Latine were named *Comites*, and the Danes *Earls*, but of so extensive an import in its signification, as we read

of

an Essential part of Parliament. 199

of *Aldermani Regis, Aldermani Comitatus, Civitatis, Burgi, Castellii, Hundredi, sive Wapentachii & novem decimorum*, so according to the strict

Spelm. Gloss. Tit. de Aldermanis, & multiplici Magistratu apud Anglo-Saxones, fol. 24, 25.

word they had whole *Regiments of Earls*. The greatest title of which, seldom, if at all, descended hereditarily till the *Confessors* time, and after *Will. I.* became King, the word *Ealdorman* began to change and vary its signification, and in room of *Aldermani Regis*, we find *Barones Regis*; for *Aldermani Comitatus, Barones Comitatus*; for *Aldermani Civitatis, Barones Civitatis*; for *Aldermani Burgorum, Barones Burgorum*; for *Aldermani Castellorum, Barones Castellorum*; for *Aldermani Hundredorum, Barones Hundredorum sive Wapentachiorum*.

Nunc ut Cantii Comites suo ordine perensem (omissis Saxonibus Godwino & aliis) qui non hereditarii sed officarii Comites erant. Camd. Britan. Cantium, fol. 248. Spelm. Gloss. Diatriba de Baronibus, fol. 64, 69, 70, 71.

Sir Henry Spelman saith, that *sumplices villarum Maneriorum Domini de quocunq; tenentes qui saccam & soccam habent*, were antiently called *Barones*.

Spelm. Gloss. in verbo Barones, fol. 69, 70.

And

Ibidem.

Baronie pluri-
me in Nor-
thumbria,
cumq; omnino
Marti se quasi
consecrarunt, non
est inter eos
quispiam melio-
ris note qui su-
am turriculam
aut munimen-
tum non habeat,
& in quamplu-
rimas Baronias
divisa fuit
quarum Domini
olim ante Ed-

Johannis Sel-
deni ad Ead-
merum & notis
& spicileg. fol.
168.

Camd. Britan.
in 8. De ordin.
Angliæ, fol. 61.

Theinorum enim
duo erant gene-
ra, majores quos
Theinos Regis

appellabant, nos Barones Regis & Theini simpliciter seu Theini minores, qui
eadem erant qui Barones minores & nonnunquam libere tenentes nuncupantur.
Spelm. Gloss. p. 242.

And all Freeholders, *hoc est tam*
in Soccagio quam per servitium militare,
had the Title of Barones; and in
his species of Barones Comitatus, saith,
Proceres nempe & maneriorum Domini
nec non libere quiq; tenentes, *Anglice*
Freeholders, had that appellation.
Notandum autem est libere hos tenentes
nec tam exiles olim fuisse nec tam vul-
gares ut hodie deprehenduntur.

wardi primi tempora Barones vulgo dicti. Camd. Britan. in fol. 658:

The great Selden in his Notes
upon Eadmerus upon the word Ba-
rones, saith, *Vocabulum nempe alia no-*
tione usurpari quam vulgo, neq; eos dun-
taxat ut hodie significare quibus peculia-
ris ordinum Comitatus locus est.

And the learned Camden writes,
Verum Baro ex illis nominibus videatur
quæ tempus paulatim meliora & molli-
ora reddidit; nam longo post tempore non
Milites sed qui liberi erant Domini &
Thani Saxonibus dicebantur, Barones vo-

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cari cœperunt, necdum magni honoris erat, paulo autem postea (meaning after the Normans coming) *eo honoris pervenit ut nomine Baronagii Angliæ omnes quodammodo Regni ordines continerentur.*

The authority of these most learned Antiquaries is such, That it would be a presumption in me to go about to add any thing, I shall only say, I have met with some Records that clearly prove their opinion, and for illustration shall subjoin one Record more, and so conclude this point.

Anno 29 H. 3. great complaint was made in Parliament against the Church of Rome's exactions here in England, whereupon

Anno 29 H. 3. *Litteræ missæ Cardinalibus Romanæ Ecclesiæ apud Lugdunum à Baronibus, Militibus, & universis Baronagii Regni Angliæ per Rogerum Bigod, Comitem Norff.*

Willi-

MS. vetus in Bibliotheca Cotton. sub effigie Cleopatraz Characterẽ contemporaneo.

The Commons of England ever

Willielmum de Cantelupo, Johannem filium Galfridi, Radulphum filium Nicholai, Philippum Basset, Barones Procuratores Baronagii Angliæ, tunc temporis Innocentio Papa quarto celebrante Concilium ibi generale. Anno gratiæ 1245.

Littere ad Concilium.

Venerabilibus in Christo fratribus universis & singulis dei gratia salutem. Barones, Milites, & universitas Baronagii Regni Angliæ, &c.

Mat. Paris. Hist. An. Dom. 1245. pag. 659. l. 10.

Electi sunt igitur (writes Mat. Paris.) ad hoc nomine totius Universitatis Regni Angliæ ad Concilium Lugdunense missi Comes Rogerus Bigod, Johannes filius Galfridi, Willielmus de Cantelupo, Philippus Bassett, Radulphus filius Nicholai, Milites, saith Mat. Westm. p. 321. l. 30. Magister Willielmus Powic Clericus.

Mat. Paris. An. eodem, p. 666. l. 51. Modigma Neustria, p. 466.

Another Letter was sent per Magnates & Universitatem Regni Angliæ, super extortionibus Curie Romanæ,

an Essential part of Parliament. 113

manæ, to the Pope himself, who *negotium posuit in suspenso*. The Ambassadors returning, and a second Parliament being called at Westm. the Record goes on.

Articuli gravaminum & oppressio- Ex MS. præn-
num quibus Regnum Angliæ oppressum tato.
fuit temporibus Henrici filii Regis Jo-
hannis per Curiam Romanam, quæ
scilicet ostensa fuerint Cardinalibus Ro-
manæ Ecclesiæ, & Inno-
centio Papæ quarto ore tenus per Pro-
curatores prædicti Regni in generali Con-
cilio apud Lugdunum, & quod gra-
vamina dictus Papa procuratoribus de-
derit in præmissis ad revocanda, quæ sci-
licet gravamina non revocata postea Ba-
rones, Milites & Universitas Baronagii
Angliæ conquerentes ostenderunt præ-
dicto Regi in Concilio habito apud
Westm. in proxima Quadragesima se-
quenti post prædictum Concilium.

Whereupon by common advice Litteræ Uni-
it was agreed, to send Ambassa- versitatis An-
I gliæ ad Papam dors

The Commons of England ever

dors with second Letters of their grievances to the Pope at Rome, directed thus. *Sanctissimo, &c. devoti*

Mat. Paris. p.
700. l. 51. an.

30 H. 3.
Edwardus, &c.

Vic. Ebor. &c. &c. & alii totius Regni Angliæ Baro-

Ostensi. quare cum ad Parliamen-

ta in quibus tam nostri

quàm regni nostri negotia de-

bent pertractari, Prælatos, Comites, Barones, & alios tam Clericos quàm

Laios per quorum industriam super negotia hujusmodi consilium salubrius poterit adhiberi. Brevia Regis de an. 9 E. 2. in turri London.

Mat. Paris.
698. l. 40. An.

Dom. 1245.

filii sui Comes Cornubiæ Richardus,

Portuum maris habitatores, nec non &

Clerus & populus universus, salutem.

Laios per quorum industriam super negotia hujusmodi consilium salubrius poterit adhiberi. Brevia Regis de an. 9 E. 2. in turri London.

Matthew Paris calls this a Parliament, Convenientibus igitur ad Par-

liamentum totius Regni Magnatibus,

and mention is made of the first

message in the Close Roll, 29

H. 3.

Rot. Claus. 29 H. 3. m. 8.
dorso.

Notæ The various Appellations and Phrases of these two Parliaments.

Barones, Milites, & Universitas Baronagii Regni Angliæ.

Tota Universitas Regni.

Magnates & Universitas Regni.

Totius Regni Magnates.

Universitas Baronagii Angliæ.

Barones, Proceres & Magnates ac Nobiles Portuum maris habitatores, nec non Clerus & populus universus. Parliamentum.

Rex Abbati de Sancto

Edmundo salutem. Cum pro

oppressionibus innumerabili-

bus factis in Regno nostro

per Ecclesiam Romanam

ob quam Magnates nostri ad

sedem Apostolicam appella-

runt,

runt, & quosdam pro ipsis & pro universitate Baronagii Angliæ ad Concilium in brevi celebrandum ad appellationem suam prosequendam duxerunt destinandos.

And indeed Records and Histories will furnish us with several Precedents, where succeeding Parliaments as well as these of *H. 3.* have sent Letters to the Pope when he attempted to invade the Rights of the Crown or Kingdom. I will give two instances in the Reigns of the two famous Princes, *Edward the First*, and *Edward the Third*.

1. *Edward the First*, *An. 29* of his Reign, claimed Scotland, as *Rex & superior Dominus*, the Pope as a Fiefe of the Roman Church; the Pope backed by the French King, Summons *Edw.* to appear before him in his Court at *Rome*, and sends his Letters or Bulls to the Archbishop

of Canterbury to serve them; the Archbishop obeys, the King tells him, *Verum quia consuetudo est Regni Angliæ quod in negotiis contingentibus statum ejusdem Regni requiratur consilium omnium quos res tangit*, and shortly after Summons his Parliament at Lincoln, in *Octabis Sancti Hillarii*, to advise with his Parliament, how to defend the rights of the Crown against the Papal Claim.

The Parliament thereupon send their Letter to the Pope, subscribed and sealed by several of the principal men of the Parliament, as the usage of that Age was, telling him, that *sane convocato nuper per serenissimum Dominum nostrum Edwardum Dei gratia Regem Angliæ Illustrem Parlamento apud Lincolniam Generali*; the King had caused the Popes Letter, *in medio, or pleno Parlamento exhiberi ac seriose nobis fecit exponi, unde habito tractatu*

Mat. Westm.

An. Dom.

1301. p. 439.

l. 2. Responsio

Regis Archie-

piscopo Cant. ad

litteras Apostoli-

cas.

Mat. Westm. A.

D. 1302. 29E.

l. p. 443. l. 42.

& deliberatione diligenti super contentis
in litteris vestris memoratis, communis,
concors & unanims omnium nostrum
& singulorum consensus fuit, est & erit
inconcusse Deo propitio in futurum, quod
præfatus Dominus noster Rex super Juri-
bus Regni Scotiæ aut aliis suis tempora-
libus nullatenus respondeat judicialiter co-
ram vobis nec Judicium subeat quoquo mo-
do aut jura sua prædicta in dubium quæ-
stionis deducat, nec ad præsentiam ve-
stram Procuratores, aut nuncios ad hoc
mittat, præcipue cum præmissa cederent
manifeste in exhereditationem juris Coro-
næ Regni Angliæ & Regiæ Dignitatis
ac subversionem status ejusdem Regni
notoriam, necnon in præjudicium li-
bertatis consuetudinum & legum
paternarum ad quarum observatio-
nem & defensionem ex debito præ-
stiti Juramenti astringimur, & quæ
in manu tenebimus toto posse totisq; viri-
bus cum Dei auxilio defendemus. Nec eti-
am permittimus nec aliququaliter permitte-

*Animadvertas
Reges & Proce-
res in condendis
legibus earum
olim jurasse ob-
servantiam.
Spelm. Gloss.
Tit. Assisa, fol.*

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mus sicut non possumus nec debemus præmissa tam insolita, indebita, præjudicialia & alias inaudita prælibatum Dominum nostrum Regem etiam si vellet facere seu modo quolibet attemptare. Quocirca Sanctitati vestræ reverenter & humiliter supplicamus, quatenus eundem Dominum nostrum Regem qui inter alios Principes orbis terræ Catholicum se exhibet & Romanæ Ecclesiæ devotum, jura sua & libertates & consuetudines & leges prædictas absq; diminutione & inquietudine pacifice possidere ac illibata persistere benignius permittatis. In cujus rei testimonium Sigilla tam pro nobis quam pro tota Communitate prædicti Regni Angliæ præsentibus sunt appensa. Datis & actis Lincolnix, Anno Dom. 1301.

Walsingham
in vita E. 3.
fol. 16v. l. 22.

2. The second is, the Letter to the Pope, made at the Parliament, 17. E. 3. touching Provisions. *Quod Rex & tota Nobilitas Regni pati noluit, &c.* thus translated, whereby the

an Essential part of Parliament. 119

the phrase *Nobilitas Regni*, in the Historian, will be explained.

“ **T**O the most holy Father in God, Lord Clement, by the grace of God, of the holy Church of Rome, and of the Universal Church, Chief and high Bishop, His humble and devout Children, The Princes, Dukes, Earls, Barons, Knights, Citizens and Burgessees, and all the Commonaltie of the Realm of England, assembled at a Parliament holden at Westm. the 15th day of May last past, &c. In Witness whereof we have hereunto set our Seals. Given in the full Parliament at Westm. on the eighteenth Day of May, Anno Dom. 1343.

*Aud Foxum
Hisor. Ecclesie
Anglicane,
Vol. 1. p. 501.
Rot. Parl. 17 E.
3 n. 59, 60.
do. do.*

*The Letter is
said to be sealed,
Sous les
seales des ditz
Grantz & toutes
les Communal-
tees des Cités
& Burghs d'An-
glettre.*

And indeed the Commons were so highly incensed, that the Parliament Roll of this Year tells us,

*Rot. Parl. 17 E.
3. n. 59. dorio.*

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that *La dite Commune ne le poet ne le voet plus endurere* those strange oppressions of the Pope and Provillors.

So that the Parliament of 24 H. 8. after great debate and consideration, and a diligent search and inspection of the *Antient Records* of the Kingdom, did ground their Statute amongst others, upon these great Authorities; the Statute saith,

Whereas the King his most noble Progenitors, and the Nobility and Commons of the said Realm, at divers and sundry Parliaments, as well in the time of King Edw. 1. E. 3. R. 2. H. 4. and other noble Kings of this Realm, made sundry Ordinances, Laws, Statutes, and provisions, for the entire and sure conservation of the Prerogative, Liberties, and preheminences of the said Imperial Crown of
this

an Essential part of Parliament. 121

this Realm, and of the Jurisdiction Spiritual and Temporal of the same; to keep it from the annoyance; as well of the See of Rome, as from the authority of other Foreign Potentates, attempting the diminution and violation thereof, as often and from time to time, as any such annoyance or attempt might be known or espied. *Pulton's Stat. 24 H. 8. c. 12.*

But to conclude the point of the *Various Lectiōs*, Certainly the different and great variety of words and phrases, by which both the ancient *Historians* and *Records* have in their several Ages and Times, expressed and denoted the *Communia Concilia Regni*, or *Parliaments*, as now called, and their constituent parts, being not well observed and considered by most of our late *English Authors* (who understood them as if they had signified what after-

The Commons of England, &c.

afterwards they did, and now do) have imposed on our *Historical* Faiths, and propagated to posterity many palpable and gross errors, whereby great and unkind clashings and diversities of opinions, as well amongst learned men as others, have had their source and spring, nay, even between *Prince and People*.

THE

THE General Conclusion.

MY only aim and endeavour in this Discourse hath been from publick *Records*, priyate *Manuscripts*, and the best *Historians*, to search out and discover *truth*, and to assert the just honour of our worthy and famous Ancestors *Commoners of England* (as now phrased) great maintainers of the interest and dignity of the *King and Kingdom*; and with submission to better Judgment, I hope I have plainly proved,

1. That the *Freemen or Commons of England* were an essential and constituent part of the *Saxon Witenagemott*, or *Parliament*.

2. That

2. That they so continued in the times of *W. 1. W. 2. and H. 1.* which last being an Englishman, by way of *Charter* restored and confirmed the *Laws of Edward the Confessor*, as his Father *William 1.* as well by his *Magna Charta*, or *Great Charter*, as by his Oaths had before done, both when he was Crowned, and also at *Berkhamstead*, in the seventh Year of his Reign.

3. And though the *Rolls of Parliament*, in the succeeding Kings Reigns till *E. 2.* be lost, or not found, so as we are at a loss as to the several Orders of *Parliament*, yet by what has been deduced from other Records before cited, it is evident I conceive, that the *Citizens and Burgeses* were a part of the *Parliament*, *Anno 16.* of King *John*, and so had not their begin-

beginning by rebellion, Anno 49
H. 3.

And therefore I may with good reason and warranty conclude, That our Ancestors, the *Commons of England*, the *Knights*, *Gentlemen*, *Freeholders*, *Citizens* and *Burgesses* of a great and mighty Nation, were very far from being in former times such *Vassals* and *Slaves*, or so abject, poor and inconsiderable, as the absurd and malicious ignorance and falsities of late Writers have been pleased to make and represent them, especially the Author of the *Grand Freeholders Inquest*, and Mr. *James Howel*, as if they were only *Beasts* of carriage and burden, ordained to be taxed and talliated, and have their *Lives*, *Estates*, and *Liberties* given away and disposed of without their own assents, under a novel opinion and conceit, that
they

The Conclusion.

they were no part of the *Commune Concilium Regni*, or Parliament, before 49 *H. 3.*

Perlege quæ Regni clarissima Conciliorum

Sunt Monumenta, aliter nil præter somnia cernis.



Appendix.

After I had compleated the foregoing Arguments, a *material Objection* was by some of my Friends offered me, which, if not cleared in this discourse, might, in their judgment, give a colour and pretence for a belief of an Opinion, which is this:

That the Commons, or people of England, were from the time of the Norman Conquest represented by such as held of the King in Capite, until 49 H. 3. and then by two Knights

Objection.
K for

for each County, and certain Burgesles for several Burroughs, and Barons for the Cinque Ports.

Solution.

Having before laid down a clear and plain distinction between *Barones Regis* and *Barones Regni*, I shall therefore now distinguish upon the phrase *Milites & libere tenentes*.

Distinction.

1. *Milites & libere tenentes qui de Rege tenent in Capite.*

Distinction.

2. *Milites & libere tenentes de Regno.*

1. Distinction.

The first Distinction I thus prove, Rot. Pat. 2. Johannis m. 9. Rex dilectis & fidelibus suis Baronibus Militibus & libere tenentibus qui de eo tenent in Hibernia.

Rot. Claus. 19 H. 3. m. 7. 8. dorso. Rex Vicecomiti Suffex Sciatis quod Archiepiscopi Episcopi Albates, Priores, Comites Barones, & omnes alii de Regno, qui de nobis tenent in Capite spontanea voluntate sua, & sine consuetudine concesserunt vobis efficax auxilium ad magna negotia nostra expedienda.

Rot. Claus. 26 H. 3. m. 7. dorso. Rex Vicecomiti Norhamptonie precipimus tibi sicut alias precipimus quod summoneri facias Archiepiscopos, Episcopos,

Episcopus, Comites, Barones, Abbates, Priores, Milites, & liberos homines qui de nobis tenent in Capite, &c.

Eodem modo Scribitur omnibus vicecomitibus Comitatum Angliæ.

Ibiæm.

As to the second Distinction, The ^{2. Distinction.} ancient Chronicles of the Kingdom say, That both before and after the *Conquest* (as we phrase it) the Kings of *England* held their Court three times in every year, at *Easter, Whitsontide, and Christmas*, and then the *Crown* was attended with most of those *qui de Rege tenerunt in Capite*, this was called *Curia Regis*; if any difference of right did arise between the *King* and his *Tenants*, or between *Tenant* and *Tenant*, here it was heard and determined, and many things were there acted and done in relation to the *Kings Barons or Tenants*, but under favour this was not the *Commune Concilium, Regni* or *Parliament* as we now call it, for the King held this Court *ex more* of custom, as *Simon Dunelmensis* ——— and *Florentius Wigorniensis* write in *vita Henrici Primi*.

But when they, and contemporary Historians, take notice of the meeting of the *Commune Concilium, Regni* or *Parliament*, then their expressions alter

and say, That *Rex ascivit Ordericus vitalis*, pag. 680. *Ex precepto Regis convenerunt*. Eadmerus *Rex Sanctione sua adunavit*, Flor. Wigorn. *Continuat*, and many such like expressions, which shew it was not held *ex more* of custom, yet true it is, Kings did often convene or summon the *Common Council* of the Kingdom at one of the said Feasts, being a great convenience to the *Tenants in Capite*.

But they summoned the *General Council* also at other times, according to the Emergency of Affairs, examples of which are obvious in the ancient Historians.

Now to shew that the *Milites tenentes qui de Rege tenuerunt in Capite*, (together with the other great Lords that held of the King) were not the *partes constituentes*, and alone did compose and make up the *Totum*, the whole body of the *Generale*, or *Commune Concilium*, *Regni* or *Parliament*. I will begin with a Statute or Act of Parliament made *tempore Richard* the First, who Reigned before King *John*, Father to *H. 3.* and 74 years before 49 *H. 3.* the *Assize* or Statute being made *per Assensum & Consilium Archiepiscoporum, & Episcoporum, & Abbatum Comitum, & Baronum, Militum*

Militum & libere tenentium totius Regni.

King John being divorced, the new Queen was Crowned *De communi assensu & concordi voluntate Archiepiscoporum, Episcoporum, Comitum, Baronum, Cleri, & Populi totius Regni.* Rot. Cart. 5. Johannis m. 5. n. 33.

The King Anno 6. Summons a Parliament *tractatur: Nobiscum de magnis & arguis negotiis nostris & communi Regni utilitate. Quia super his, quæ a Rege Franciæ per nuncios nostros & suos nobis mandata sunt; and that expedit habere consilium Magnatum terræ therein.* Rot. Claus. 6. Johannis m. 3.

qua alia notabilis persona transeat ad partes transmarinas, Inhibitio ne qui Magnates, viz. Comes Baro Miles seu alii. Rot. Claus. 3 E. 2. m. 16. 19. dorso.

The King *per Commune Concilium Regni* then made an Assize of Money. Rot. Pat. 6. Johannis m. 7. dorso.

And at the same Parliament *provisum fuit Communi assensu Archiepiscoporum, Episcoporum, Comitum, Baronum, & omnium fidelium nostrorum Angliæ,* Rot. Pat. 6. Johannis m. 2. dorso.
that nine Knights through all England should find a *Tenth bene paratum cum Equis & Armis* for the defence of the Kingdom, and that those nine Knights should find the *tenth Knight* every day two shillings *ad liberationem suam.*
Certainly the words *Fideles Angliæ*

cannot be understood to be restrained to the Tenants *in Capite* only.

Rot. Pat. 8 & 9
Johannis, n. 2.

The Archbishops, Bishops, Abbots, Priors, & Magnates Regni gave an *Auxilium ad defensionem Regni & recuperationem terrarum nostrarum* against the French King, and who the Magnates

Rot. Pat. 22 E.
1. m. 2. De sub-
sidio Curie.
Rot. Pat. 25 E.
1. m. 22. In
confirma. jorma.

then were, the Patent Roll 22 E. 1. shews where it is contained, *Rex, &c. Cum Comites, Barones, Milites, & alii de Regno nostro in subsidium guerra, nunc sicut alias nobis & Progenitoribus nostris Regibus Anglia liberaliter fecerunt undecimam de omnibus bonis suis mobilibus.* Hence I shall observe, 1. That the Subsidy in E. 1. time was granted in *Parliament*, and so this of King John's. 2. The words *Progenitoribus nostris Regibus Anglia* must unquestionably comprehend King John, Grandfather to Edward the First, and by a reasonable construction may be extended higher.

Rot. Pat. 8 &
& *Johannis* n. 1.
But we know
that diverse
Parliaments
were in King
John's time,
though the
Laws made in
them be lost,
Selden's Titles
of Honor, p. 587.

And at the same Parliament, 8 & 9 *Johannis*, the *universitas Comitum Baronum Militum & aliorum fidelium* complain against the Clergy about *Rome-sect*, whereupon the King granted his *Prohibition* or *Supersedeas* to the Clergy that they should do nothing therein, *quousque cum universitate* (before men-

mentioned) *super hac Colloquium habemus.*

Anno 17 Johannis, The Agreement and Peace at *Runningmead* was made between King John of the one part, and Robert Fitz Walter, Matthal of God and Holy Church, several Earls there named, & alios Comites, & Barones, & liberos homines totius Regni ex altera parte, or as the Patent Rolls 17 Johannis m. 17. dorso. Generale Concilium, and Rot. Claus. 28 H. 3. m. 12. dorso. Parliamentum de Runemed, I have seen it several ways spell'd or writ, Runemeid, Rendmed, Redmede, which may seem to be a word of Saxon extraction, for Mr. Somner tells us, that *Rædan* is *Confulere*, and so justifies *Mat. West. pag. 273.* in his Etymology, when he says, *Ren-nemed quod interpretatum Pratum Concilii eo quod antiquis temporibus ibi de pace Regni sapius Concilia tractabantur.*

Rot. Pat. 17 Johannis m. 21. dorso.

Somneri Gloss. in verbo Rædan. Mat. westm. Anno 1215. 17 Johannis.

Anno 2 H. 3. Magna Charta was in Parliament granted and confirmed, an ancient Transcript of which, writ in the time of E. 1. I have, and conceive that those who then gave a Subsidy of a Fifteenth to the Crown were the parts that compounded and made the Com-

M. S. penes Do-
minum Samue-
lem Baldwin
servientem Do-
mini Regis ad
Legem.

M. S. penes Jo-
hannes Cook
generosum de
Interiori Tem-
plo.

M. S. Statuto-
rum penes meip-
sam.

munne Concilium, Regni or Parliament,
and who they were let the Charter
speak. *Pro hac autem donatione, & con-*
cessione libertatum istarum & aliarum
contentarum in Charta nostra de liber-
tatibus Forestæ, Archiepiscopi, Episcopi,
Abbates, Priores, Comites, Barones, Mili-
tes libere tenentes, & omnes de
Regno nostro dederunt nobis quintam de-
cimam partem omnium bonorum suorum
mobiliū. Testibus prænominatis &
multis aliis Dat. per manus venerabilis
patris Domini Dunholmenſis, Episcopi,
Cancellarii nostri apud Sanctum Paulum
London sexto die Novembris, Anno
Regni nostri secundo.

Which is confirmed by the close Roll
of this year thus:

Rot. Claus. 2 H.
5. m. 11. dorſo.

Rex Vic. Ebor, &c. salutem Mittimus
tibi Chartas de Libertatibus concessis
omnibus de Regno nostro, tam de Foresta,
quam aliis mandantes quatenus eas legi
facias publice in pleno Comitatu tuo
convocatis Baronibus, Militibus, & om-
nibus libere tenentibus ejusdem Comita-
tus, qui ibidem jurent fidelitatem vestram,
& tu diligenter attendens singula puncta
Chartarum ea per omnia facias jurari
observari, &c. Dat. 22. die Februarii.

Anno

Anno Dom. 1225. 9 H. 3. That King
 summoned a general or Common
 Council of the Kingdom at *Westminster*
presentibus Clero & Populo cum Magnati-
bus Regionis solemnitate igitur ut decebat
completa Hubertus de Burgo Domini Regis
Justiciarius ex parte ejusdem Regis proposuit

Mat. Paris
 pag. 323. l. 9:
 Anno Dom.
 1225. Eardnes
 Angliæ concess-
 erunt Regi
 Henrico 15.
 partem om-
 nium mobili-
 um & cattal-
 lorum totius

Angliæ pro libertatibus suis quas Rex Johannes pater eis concesserat &
 Charta confirmaverat apud Runemede, Ex M. S. Rad. Coggeshale.

coram Archiepiscopis, Episcopis, Comitibus,
 Baronibus, & aliis Universis damna & in-
 jurias, que Regi illata fuerant in partibus
 transmarinis. Whereby the King and
 many Earls and Barons were disinherited
 & cum multi sunt in causa multorum
 subventio erit necessaria petit ergo ab
 omnibus Consilium pariter & auxilium
 quibus Corona Angliæ dignitates amif-
 sas, ac jura posset pristina revocare, Ad
 hoc quoque plene perficiendum Regi suffi-
 cere credidit, si ea quinta decima pars om-
 nium rerum mobilium totius Regni Angliæ,
 tam a personis Ecclesiasticis, quam a Lai-
 cis donaretur. To which it was answer-
 ed, Habita deliberatione quod Regis pe-

Nota.
 Anno 1225.
 9 H. 3. Rex
 Henricus dedit
 & concessit ho-
 minibus de
 Regno Angliæ
 libertates &
 liberas consue-
 tudines sicut
 erant in diebus
 antiquis & fe-
 cit eis inde
 Chartas duas
 unam de liber-
 tatibus & li-
 beris consuetu-
 dinibus Regni
 aliam de liber-
 tatibus Forestarum
 pro hac donati-
 one & concessi-
 one dederunt
 Regi quantum

decimum denarium per totam Angliam. Ex vetusto Chronico, M. S. in
 Bibliotheca Bodleiana inter Codices Will. Archiep. Cantuar. 4^{to}.
 K. 84.

tionibus

titionibus gratanter adquiescerent; si illis diu petitas libertates concedere voluisset, which the King condescended unto. And Chartis protinus conscriptis Regis sigillo munitis & sic soluto Concilio.

The Charters I shall pass over, only with this former Observation, that I conceive those that gave the Subsidy were the members of that Parliament, and who they were will appear by the *Inspeximus* of the Great Charter, and the Charter of the Forest inrolled in the Statute Roll, 25 E. I. viz.

Rot. Statut.

25 E. I. m. 38.

Coke 2. Instit.

c. 38. fol. 76.

Rex H. 3. exi-

git ab Huberto

de Burgo quod

ei respondeat de

collectiōe to-

tius quinte-

decime que

per Commune

Concilium to-

tius Regni

custodiri &

habere debant

in deposito.

Mat. Paris Ad-

dit. pag. 150.

l. 28.

All the ancient

Writs upon

Magna Charta say,

That it was made per

Commune Concilium Regni.

Pro hac autem donatione, & concessione libertatum istarum & aliarum libertatum contentarum in Charta nostra de libertatibus Forestæ, Archiepiscopi, Episcopi, Abbates, Priores, Comites, Barones, Milites, libere tenentes, & omnes de Regno dederunt nobis quintamdecimam partem omnium mobilium suorum Concessimus etiam eisdem pro nobis & hæredibus nostris, quod nec nos, nec hæredes nostri aliquid perquiremus (i. e. a Papa) per quod libertates in hac Charta contentæ infringantur vel infirmantur. Et si ab aliquo contra hoc aliquid perquisitum fuerit, nihil

valeat.

*valeat & pro nullo habeatur. Hiis Testi-
bus Benefacio Cantuariense Archiepiscopo,
E. Londinense Episcopo & aliis Dat.
apud Westmonasterium decimo die Fe-
bruarii, Anno Regni nostri nono.*

Which was solemnly ratified in Par-
liament by King E. I. who pro salva-
tione, & defensione Regni, & pro con-
firmatione Magnæ Chartæ de libertatibus
Angliæ, ac etiam pro confirmatione Char-
tæ de libertatibus Forestæ, had then gi-
ven him an eighth part *omnium bonorum
singulorum* Laicorum, with this protesta-
tion, and *salvo, quod levatio octavæ præ-*
dictæ non cedat in prejudicium servitutem
sive exheredationem, nec in consuetudi-
nem ullo modo futuris temporibus trahi
possit. The Confirmation runs thus,
Nous al. honour de Dieu & de Seinte Es-
glise & au profit de tout nostre Roiaume
avez grante pur noz & pur noz heirs que
le grand Chartre des Franchises, & la
Chartre de la Forestæ les que les furent
faites per Commune assent de tout le
Roiaume en temps le Roy Henry nostre
pier soient tenus en tous leur points sans
ull blemissement.

Ensi a vous grant pur nous & pur nos
heirs as Archievesques, Evesques, Abbes,
& Priors, & as autres Gents de Seinte
Eglise

Rot. Pat. 25 E.
1. m. 6. *Quod*
octavæ concessio
facta Domino
Regi pro confir-
matione Magnæ
Chartæ non ce-
dat in populi
præjudicium
vel consequenti-
am.

Rot. Statuto-
rum 25 E. 1.
m. 38.

Nota.

Ibidem.

Nota. The
parts that
constituted
the commune
assent de tout
le Roiaume.

Appendix.

Esglise as Countes, & Barons, & a tout la Communante de la terre que mes nul besoigne tien manere des aides mises ne prises de nostre Roiaume ne prendromus forsque per Commune assent de tout le Roiaume & a Commune profit de mesme le Roiaume. Teste 10 Octobris.

To deny therefore that the Knights and Freeholders *de Regno* of England were a constituent part of the *Commune Concilium*, or Parliament, in 2 & 9 H. 3. but were represented by the Tenants *in Capite*. A man may with equal Reasons, and as strong Authorities argue and affirm, that though the Records plainly declare the *Enumeratio partium* of those great Councils, and the *Comites & Barones* to be one part then present, and that they gave a Subsidy concurrent with the other parts, yet really, 1. They were not there nor joined in the Tax, but were represented by the *Milites* and *libere tenentes de Regno*. 2dly, Though the *Comites, Barones, Milites, & libere Tenentes de Regno* are expressly and particularly mentioned in these *grand Charters*, yet in truth they were not present at those great Councils, but their Votes and

and Power were included, and they represented in and by *omnes Archiepiscopi, Episcopi, Abbates, & Priores de Regno*, (though the greater number of the two latter held not of the King in Capite,) who made Laws, and gave Taxes *exclusis* or *omissis Comitibus Baronibus Militibus, & libere tenentibus de Regno*. Or 3dly, Notwithstanding the naming of the Prelates of the Church, yet their Power, Vote, and Authority was transferred and made over to the Earls, Barons, Knights and Freeholders of the Kingdom, and their appearance there was not *Personal*, but by *Representation*, which no man certainly can believe.

I shall close up this Point with a memorable Record which I happily found in the Exchequer *de Anno 17 E.* 3. The Prior of Coventry was attached to answer to the King *de servitio octo feodorum Militum per ipsum Priorem & Predecessores suos Regi, & Progenitoribus suis ab Anno 29. Domini Regis H. proavi ipsius Regis nunc substracto & concealato*. The Prior appears per Henricum de Stretford, whereupon the Barons Order a search of the Rolls and Memoranda of the Exchequer, and thereupon it was found

Inter Communia de Terminis S.

Hillary 17 E.

3. Recorda penes Rememorato-

rem Domini Re-

gis in Scacca-

rio. Warr. de

Priere de

Coventr. at-

tach. pro trans-

gressione.

found in the Roll of 29 H. 3. *sub Titulo de Auxilio ad primogenitam filiam Regis maritandam*, That the Prior stood charged with Ten pounds for ten Knights fees, and in the great Roll 32. of that King *Titulato Auxilium Episcoporum Abbatum, Priorum concessum ad sororem Regis maritandam Frederico Imperatori*, the Prior stood charged *de viginti marcis, &c.* To this the Prior pleads, *Quod ipse & Predecessores sui tenuerunt omnia terras & tenementa sua per servitium duorum feodorum Militum tantum & quod Dominus Rex, seu Progenitors sui de aliquibus aliis servitiis per ipsum Priorem, seu Predecessores suos nunquam sciti fuerunt per finem, seu servicium per corpora hominum factum quod liquere poterit per Memoranda hujus Scaccarii, si fiat inde scrutinium, &c.* Et quoad hoc quod compertum est hic in Rotulis &c. *Quod tempore dicti Regis Henrici Terii computatum fuit de certis pecunie summis de auxiliis eidem Regi Henrico ad filium suum Militem faciendum & sororem suam maritandam concessis.* Hoc ei non prejudicat in hac parte. *Dicit enim quod Auxilia illa non fuerunt, nec censi possunt esse servicia immo quedam subsidia per Bagnates, & Com-*

& Communitatem Regni spontanea,
 & mera voluntate Regi concessa, &
 tam de tenentibus aliorum, quam de
 tenentibus de Domino Rege in Ca-
 pite levanda quo pretextu dictus Compo-
 tus de auxiliis predictis fuit tam pro
 feodis tenentium, tunc Prioris loci præ-
 dicti quam pro feodis ipsius Prioris pro-
 priis, quod idem Prior dicit posse liquere
 Curie per Certificationem tunc Prioris
 loci predicti tunc Baronibus de Scac-
 cario.

From this Record I shall make these
 Observations :

1. That the Crown could not *de jure*
 require any *servicia* from the Subject,
 but those that were *debita*, *omnes qui*
de Rege tenent per servicium militare,
 (and none else,) *Regi faciant auxilium ad*
primogenitam filiam maritandam, saith
 the King, Rot. Pat. 29 H. 3. m. 7. dorso,
 and so said the Law long before. *Sunt*
etiam quedam Communes præstationes quæ
servitia non dicuntur, nec de consuetudine
veniunt, &c. sicut sunt Hidagia, Corra-
gia, & Carvagia, & alia plura de neces-
sitate & ex consensu Communi totius
Regni introducta & quæ ad Dominum
feodi non pertinent.

Bracton, lib. 2.
 cap. 16. fol. 37.

2. There

*Rex Angliz
neque per se aut
Ministros suos
subsidia, aut
alia quævis
onera imponit
Ligeis suis sine
assensu totius
Regni sui in
Parlamento suo
expresso. For-
tescue de Lan-
dibus. Legum
Angliz, cap.
36. p. 84.*

2. There is a difference appears between *Servitia* and *Auxilia*: The Law allows therefore the Priors plea, when he says, That those extraordinary Aides were not *Servitia* but *Auxilia*, granted to the Crown *per Magnates & Communitatem Regni spontanea & mera voluntate*, or as *Bracton* before cited, *Consensu communi totius Regni*.

3. Those Aides were given *tam de tenentibus aliorum quam de tenentibus de Domino Rege in Capite levanda*, quo pretexta dictus *Compotus de Auxiliis prædictis* were as well for the Fees of the Tenants of the then Prior, as for the Fees of the Prior himself, which the Prior said would clearly appear to the Court by the Certificate of the Prior, his *Predecessor*, in the time of *H. 3.* made to the Barons of the Exchequer, so that the Tenants of the Prior did grant an *Aid* as well as the Prior himself, and that in *Parliament*, for as I have observed before, *Rot. Claus. 32 H. 3. m. 13. dorso*, there was a *Parliament* then held.

4. That in the Reign of *H. 3.* and preceding times, when the *Knights* and *Freeholders*, who held not of the King, but other Lords, did in the *Commune*
Con-

Concilium or Parliament, grant an *Auxilium* or Aid to the Crown, the great Lord or Baron of the Fee, of whom the Freeholders held, was charged in the Exchequer to answer for the Collection thereof, under the title of his *Barony*, as the *Bishop* of every Diocese, even till Queen *Elizabeth's* time, was by Law chargeable for the collecting of Aids granted by the *Clergy* within his Diocese, yet certainly as the *Bishop* never had any power to give for, or tax his *Clergy*; no more could or did any great Lord of the Fee either *jure tenure*, or *representationis*, charge or give away the Estate of his free Tenants, who were independent *in omnibus serviciis suis debitis solummodo exceptis*; this Point being not well observed and understood by late Authors, has caused the mistake about the Tenants *in Capite*, representing the *Commons* in *Parliament*.

5. It seems to me a *secre* and *hard Principle* to be believed, that the far greater number of the Abbots and Priors, the whole *Body* of the inferior *Clergy*, in those and after-times, so considerable every way in the Kingdom, the generality of the Knights and Freeholders of *England*, who never
 I. held

held of the King *in Capite*, yet very considerable in number, and all the Citizens and Burgesſes ſhould, till 49 H. 3. either be *totally excluded* from being any part of the *Generale Concilium Regni* or Parliament, or else by a *Law*, of which there is not the least footſteps in *History* or *Law*, were for ſo many Ages to be represented by the *Tenants in Capite* only in *Parliament*, the transcendent Power of which *Council* in Conjunction with the King as *Head* thereof Sir *Thomas Smith*, that great and learned man, who was *Secretary and Privy-Councillor* to our famous Queen, an old Parliament-man, when he comes to write of the *Parliament*, and its largeneſs of Power, ſays thus, *In Comitibus Parliamentariis poſita eſt omnis Auguſtæ abſoluteque poteſtatis vis, quippe quemadmodum Robur & virtus Angliæ dicuntur in Acie reſidere Parliamentaria Comitibus veteres leges jubent eſſe irritas, novas inducunt, præſentibus juxta ac futuris modum conſtituunt, jura & poſſeſſiones hominum privatorum commutant, ſpurios Natalibus reſtituunt, Cultum divinum ſanctioribus corroborant, pondera & meſuras variant-----incerti juris contraverſas dirimunt, ubi nihil lege cautum fuit,*

De Repub. & Administratione Anglorum, Tho. Smith, lib. 2. cap. 2. fol. 50. 51.

fuit, censum agunt, Capitationes & vectigalia indicunt, delictorum gratiam faciunt, afflictas & Majorum sceleribus perditas familias erigunt, vitæ necisque potestatem in eos obtinent quos ad hujusmodi disquisitiones Princeps advocaverat, atque ut concludam breviter, quicquid in Centuriatis Comitiis, aut in Tribunitiis Populus Romanus efficere potuisset, id omne in Comitiis Anglicanis tanquam in Cætu Principem populumque representante commode transigitur. Interesse enim in illo conventu omnes intelligimur cujuscunque amplitudinis status aut dignitatis Princepsve aut Plebs fuerit, siue per se ipsum hoc fiat, siue per procuratorem, nam omnibus peræque, gratum esse oportet quicquid ex Senatusconsulto Parlamentario profectum est.

6. It is observable, that the Prescription of Progenitores Regis, in the Record of the Prior of Coventry tempore E. 3. did expressly extend to the Reign of H. 3. his great Grandfather and higher too, so that I had good authority and warrant to say before, that, when the Burgeses of St. Albans, in the Parliament 8 E. 2. affirmed, That they and their Predecessors sicut ceteri Burgeses de Regno, as the rest of the Bur-

If it were needful, I could give numbers of Records, that prove the extension of such Prescription high-er.

gesles of the Kingdom had *totis retro-actis temporibus*, in all times past, in the time of E. I. & *Progenitorum suorum*, and of His Progenitors, sent Two Burgesles to every Parliament, they had, as well as other Boroughts of England sent Burgetics to the *Generale Concilium*, or *Parliament* before mentioned, in the 17th year of King John, Grandfather to E. I. at least, and so by clear evidence before 49 H. 3.

From the aforefaid *Authorities* and *Reasons*, we may with good consequence conclude.

1. That the *People* or *Commons* of England, from the time of the *Norman Conquest*, till 49 H. 3. were not represented in the *Commune Concilium*, *Règni* or *Parliament*, by such only as *held* of the *King in Capite*.
2. And that the *Commons* or *People* did not begin to be represented by *Knights*, *Citizens*, *Burgesles*, and *Barons* of the *Cinque Ports* in the said 49 H. 3.

And now I shall subjoin some material Records relating to my former Discourse.

Inter

Inter Communia de Term.
Trin. Anno 7 E. 2. Ad-
huc Recorda.

*Penes Rememo-
rator. Domini
Thesaur. in
Scaccario re-
manen.*



In nomine Poliarchi
Iesu Christi salvato-
ris mundi totiusque
Creature Creatoris cu-
jus Divino Dominatui
quique donatores debi-

*Carta Regis
Cnut.*

to servitio subnixe deseruiunt, cuius
etiam omnipotentatui universi poten-
tatus obsecundari erantissimi prepro-
perant, quia bonitas ejus bonitatis est
incomprehensibilis, & miseratio inter-
minabilis, dapnitas bonitatis ineffa-
bilis longanimitas quoque super pra-
vorum nequitias quantitatis prolixi-
tate cuiuslibet longior qui cotidianis
admonitionibus religiosam conversa-
tionem ducentes monet ut pie Sectan-
do iustitiæ culturam non eam deserun-
do linquant; quin potius perseverabili
instantia in ejus cultura ut permaneant
paterno affectu hortatur; qui nihilomi-
nus eadem affectione mandat peccato-
ribus ut resipiscant a suis iniquitatibus

*Nota, the parties of the
Witena-gemot or Parl.
Fideles, i. e.
oites qui in
Principis ali-
cujus ditione
sunt vulgo sub-
jecti, Spel.
Gloss. 223.*

convertentes, quia eorum execratur
mortem ejus amoris stimulo & fide
suffultus ejus largis sua miseratione
Ego Cnut Rex totius Albionis Insule
aliarum nationum plurimarum in Ca-
thedra Regali promotus cum Consilio
& decreto Archiepiscoporum, Episcopo-
rum, Abbatum, Comitum aliorumque
omnium fidelium eligi sanciendo. At-
que perpeti stabilimento ab omnibus
confirmandum ut Monasterium quod
Biadricesworth nuncupatur, sit per
omne evum Monachorum gregibus
deputatum ad inhabitandum, & ab
omni Dominatione omnium Episcopo-
rum Comitatus illius funditus libe-
rum, ut in eo Domus servientes
Monachi, sine ulla inquietudine pro
statu Regni Domini prevaleant pre-
cari. Placuit etiam mihi hanc optio-
nis electionem roborare privilegio isto
in quo indere precepi libertatis donum,
quod jam olim Edmundus Rex occi-
dentalium Saxonum largitus est suo
equivoco pro nanciscenda ejus gratia,
& mercede aterna scilicet Edmundo
Regi & Martiri quod bone voluntatis
voto augere cupimus, quatenus ejus
promereri partibus merear portionem
eius beatitudinis post hujus cursum
vite.

vite. Tali libertate concedo fundo
 frui illi in quo idem status pansat ut
 quociens populus uniberlus persoluit
 censum Danis vel ad Naves seu ad
 arma persolbant inhabitantes in ipso
 fundo eadem ad usus quos elegerint
 fratres illius loci sitque nobis remedio
 hoc michi quippe eque Reginae meae
 Elsgise ac filiis nostris omnibusque qui
 pridem ei hoc contulerunt. Huic li-
 bertati concedo additamentum scilicet
 maritimos pisces, qui michi contingere
 debent Annualiter per Teolonei lu-
 crum & piscationem quam Ulfkytel
 habuit in Wylla, & omnia iura qua-
 rumcumque causarum in villis quae
 Monasterio adjacent & quae adjiciendae
 sunt per gratiam Dei dedi quoque
 Reginae meae assensum concedens ei
 pro sua elemosina dare quatuor Milia
 Anguillarum cum muneribus quae
 pertinent ad illas pro Annuali censu
 in villa que cognominatur Lakyn-
 ghythe, si quislibet quod absit istam
 libertatem quoquoque conatu nititur
 servitutis iugo subigere vel prava
 intentione transmutare. Ut rursus
 Clericos in eo collocet loco sit addictus
 captivitati aeternae careat sempiterna
 libertate, & mancipatus servitio Dia-

holi ejusque consortio sit in extricabili-
bus habenis constrictus nisi satisfactio
ejus erratui subveniat quod proflus
optamus. † Ego Cnut Rex gentis
Anglorum altiarumque nihilominus hoc
privilegium iussi componere & compo-
situm cum signo Dominicæ crucis
confirmando impressi.

† Ego Alfgifa Regina omni alacrita-
te mentis hoc confirmavi.

† Ego Wulstanus Archiepiscopus con-
fensi.

† Ego Athelnothus Archiepiscopus
confirmavi.

† Ego Godwinus Episcopus corobo-
ravi.

† Ego Alfwinus Episcopus assensum
dedi.

† Ego Alffinus Episcopus Confir-
mavi.

† Ego Athericus Episcopus con-
clusi.

† Ego Alfwynus Episcopus robo-
ravi.

† Ego Brithwaldus Episcopus.

† Ego Iric Dur.

† Ego Godwinus Dur.

† Ego Ulf Dur.

† Ego

- ✠ Ego Eglaf Dur.
- ✠ Ego Hacun Dur.
- ✠ Ego Leofwynus Dur.
- ✠ Ego Godricus Dur.

- ✠ Ego Oslacus Miles.
- ✠ Ego Theoreth Miles.
- ✠ Ego Thurkil Miles.
- ✠ Ego Thrym Miles.
- ✠ Ego Brothor Miles.
- ✠ Ego Alfricus Miles.
- ✠ Ego Alfwynus Miles.

Nota, here we find that the Knights were in the Saxon and Danish Commune Comitum, or Parliament in King Cnuts Reign.

- ✠ Ego Leofricus Abbas.
- ✠ Ego Alwardus Abbas.
- ✠ Ego Athelstanus Abbas.
- ✠ Ego Alflias Abbas.
- ✠ Ego Leofwinus Abbas.
- ✠ Ego Wulfredus Abbas.
- ✠ Ego Oskytelus Abbas.

- ✠ Ego Alfwius.
- ✠ Ego Alfricus.
- ✠ Ego Alfricus.
- ✠ Ego Leofsius.
- ✠ Ego Leofricus.

Domino

Hen. primus
Rex, Eadmeri
Historie Novo-
rum, Lib. 5.
pa. 111.

Domino Sanctæ Universalis Ecclesie summo Pastori Paschali; Conventus Ecclesie Christi Cantuariensis fideles Orationes, & totius Sanctæ Devotionis obsequium. Notum esse non dubitamus gloriosæ Paternitati vestræ (pie domine) quod Ecclesia Cantuariensis Mater Nostra, Sancta scilicet Romanæ Ecclesie Specialis filia jam ab obitu beatæ Memoræ Patris nostri Anselmi Archiepiscopi per quinquennium cura Pastoralis officii peccatis nostris erigentibus sit destituta. Nuper autem respectu Misericordiæ Dei, adunato conventu totius Anglici Regni in præsentia gloriosi Regis nostri Henrici electus a nobis & Clero & populo est ad Regimen ipsius Ecclesie Radulphus Rossensis Episcopus Nobis sufficientissime cognitus, & propter Vitæ suæ meritum & Sanctæ conversationis effectum toti Regno valde acceptus. Huic Electioni assuerant Episcopi Abbates & Principes Regni, & ingens populi multitudo consentiente Domino nostro Rege & eandem electionem laudante, suæque auctoritate corroborante Quoniam igitur ita res se habet Mittimus ad vos, modis quibus possumus supplicantes ut quem

ad

Nota.

Nota.

ad sublevationem & consolationem
Ecclesiæ suæ Deus (quantum nobis
Datur intelligi) elegit vestra Sancta
auctoritate in quo electus est con-
firmetis, & ei Pallium quod omnes An-
tecessores sui a Sacratissima sede beati
Petri consecuti sunt transmittere
dignemini ne Sanctitate vestra aures
pietatis suæ precibus Nostris (quod
Deus avertat) non inclinante in
pristinās miseriās aliquo Eventu Ec-
clesiā nostrā (filia vestra) relabatur.
Ipsemet enim tanta corporis imbecilli-
tate gravatur, ut non sine Magno pe-
riculo sui, & detrimento omnium no-
strum valeat hoc tempore vestigiis
vestris se presentare. Sanctum Aposto-
latum vestrum omnipotens Deus dig-
netur ad honorem suæ Sanctæ Ec-
clesiæ per multa tempora incolu-
mem conservare Dignissime Pater.
Amen.

Henrico Regi Anglorum charo Do-
mino suo ac Summo honore Venerando,
frater Radulphus Sanctæ Cantuarien-
sis Ecclesiæ indignus Sacerdos & totus
Conventus ejusdem Ecclesiæ salutem,
& orationes & fidelia obsequia No-
tum facimus Sublimitati vestræ
Alexandrum

Henricus Pri-
mus Rex.
Eadmeri Hist.
Novarum, lib. 5.
pa. 131.

Alexander the First.

Nota, the various expressions of the General Council or Parli-ment of Scotland.

1. *clerus & Populus.*

2. *Episcopi, Abbates, Comites, Barones, Thani & tota Communitas Regni.*

3. *Episcopi, Abbates, Barones, ac prohi homines Scotiae.*

4. *Praelati, & Nobiles, & universitates & communitates civitatum & Villarum de illi Regni Scotiae. See Regiam Majestatem Scotiae, written by Sir John Skene, pa 3. 22. Rot. in Taveri London. 22 E. 1. vide pa. 22. 23.*

Alexandrum Regem Scotorum cum consensu Cleri & populi Regni sui Legatos suos ad nos misisse & consilium curae Pastoralis ad opus Ecclesiae Sancti Andreae a nostra Ecclesia ex petuisse Considerantes ergo eorum justam Petitionem & tam Divini amoris Reberentiam, quam Sanctae Matris Ecclesiae Utilitatem attendentes laudandis desideriis pium prae buimus assensum Concessimus ergo juxta petitionem eorum personam Ecclesiae nostrae ab eis Denominatam Dominum Edmerum quam a pueritia disciplinis Ecclesiasticis sublimiter iustitutum & Sanctis Moribus Decenter Ornatum ad officium Sacerdotale omnino scimus idoneum. Vestram igitur venerabilem sublimitatem submisso corde deposcimus ut vestrae celsitudinis pia voluntate atque auctoritate & illorum Deo digna petitio & super tam Necesario Ecclesiae Dei Negotio nostra humilitatis concessio roboretur. Omnipotens Deus sublimitatem vestram ad honorem suum & munimen Ecclesiae suae per longa tempora incolumen custodire & post temporale Regnum dignitate perennis Regni sublimare dignetur.

Refe-

Rescriptum Regis ad hæc.

Henricus Rex Anglorum Radulfo
 Archiepiscopo Cantuariæ salutem volo
 & concedo ut Monachum illum unde
 Rex Scotiæ te Requisivit, liberum ei
 concedas ad consuetudinem Terræ
 suæ in Episcopatu Sancti Andrea
 Teste Everardo de Calna apud Rotho-
 magum.

Patri Venerabili Paschali Summo
 Pontifici Henricus Dei Gratia Rex
 Anglorum salutem Promotioni vestræ
 in sedem Sanctæ Romanæ Ecclesiæ
 plurimum Congaudeo, petens quod ami-
 citia Quæ patri meo cum Antecessori-
 bus vestris fuit, inter nos quoque illi-
 bata permaneat, unde ut dilectio &
 benignitas a me videatur sumere ini-
 tium. Beneficium quod antecessori-
 bus meis beatus Petrus habuit vobis
 mitto, eosque honores, & eam obedi-
 entiam quam tempore patris mei An-
 tecessores vestri in Regno Angliæ
 habuerunt in tempore meo ut habe-
 tis volo; eo videlicet tenore, ut dig-
 nitates usus & consuetudines quas
 pater

Chronicon
 Johannis
 Brompton, Col.
 99. 1000.
 Anno Domini
 1103. 4^{to}.
 Hen. primi.

Rot. Par. 40 E.
3. n. 7. 8.
*Quod omnes
tangit ab omni-
bus approbatur.
Vide Argu-
ment the 8th,
pa. 28. usque ad
finem.*

Rot. Par. 15.
*Johannis pars
2. m. 2.*

pater meus tempore antecessorum
vestrorum in Regno Angliæ habuit,
Ego tempore vestro in eodem Regno
meo integre obtineam Notumque ha-
beat Sanctitas vestra quod me vivente
Deo auxiliante dignitates & usus
Regni Angliæ non minuentur & si ego
quod absit in tanta me dejectione
ponerem, optimates mei immo totius
Angliæ populus id nullo modo patere-
tur Habita igitur Karissime Pater uti-
liori deliberatione ita se erga nos mo-
deretur benignitas vestra ne quod
inbitus factam a vestra me cogatis
recedere obedientia.

Rex Baronibus, Militibus, & om-
nibus fidelibus totius Angliæ salutem
sciatis, quod die Martis prox. ante
_____ suscepimus litteras Domi-
ni Papæ in partibus Picardiæ de
_____ Relaxatione Interdicti An-
gliæ, quas destinavimus venerabili P.
Winton Episcopo Justic nostro & vos
rogamus attentius tanquam dilectos,
& fideles nostros quorum dilectioni &
fidelitati plene confidimus quatenus
secundum quod idem Episcopus vobis
diceret Consilium & auxilium vestrum
ad honorem nostrum & vestrum, &
statum Regni nostri melius commu-
nicandum

nicandum efficaciter super hoc appo-
natis ut vobis modo ad uberiores
teneamur gratiarum Actiones. Et
ut dilect. quam hactenus erga nos
habuistis in hoc merito ———
nostrum si fieri literas nostras super
hoc transmissemus, set ut negotium
illud, quod & nobis & vobis ad commo-
dum cedet & honorem & majori expe-
dieretur festinatione has literas, &c.
T. meipso apud Rupellam sexto die
Martii.

Eodem modo scribitur.

Majori & Baronibus London.
Majori & probis hominibus Winton.
Probis hominibus Northampton.

Linc. Ebor.	Wigorn. Cantebr.
Oxon. Glouc.	Hunt. Bristoll.
Heref. Exon.	Norwich.

Eodem modo scribitur.

Omnibus Burgis

&

Dominicis Domini Regis Dat.
eodem.

Rex

Rot. Claus.
15. Johannis
m. 1.

Rex dilecto & fideli suo Willicmo
Com. Maresc. salutem sciatis ,
quod salvi Dei gratia & incolumes
apud Rupellam applicuimus die Sab-
bati prox. post capt. Jennim &
magnæ partis gentis nostræ. Et
statim ex quo advenimus tamen reddita
nobis fuerunt cum relictis xxvj. Castra
& fortalicia & præter paucos dies pro-
cessimus ad Castrum de Millefen.
obsidendum, & tunc Castrum illud
cepissemus venit ad voluntatem & mi-
sericordiam nostram Johannes de Por-
tio Clericus & continuo post illum
venit similiter ad voluntatem & mise-
ricordiam nostram Savericus de Malo
Leone quem Consilio Domini Burde-
gensis Archiepiscopi & aliorum fideium
nostrorum in pacem nostram admis-
simus ; die autem Martis prox.
ante mediam Quadragesimam dum
adhuc moram fecissemus circa Castrum
illud funditus prosternendum, venit
ad nos Acelina Romana frater Guliel-
mi de Sancto Andoeno asserens nobis
litteras Domini Papæ de forma Inter-
dicti relaxandi in Anglia quas Venera-
bili patri nostro Domino P. Winton
Episcopo destinabimus, unde vobis
mandamus Rogantes quatenus ad
negotium

negotium illud exequens ad honorem Dei, & nostrum & vestrum Consilium, & Auxilium efficaciter impendatis & faciatis super negotio ista id quod Dominus Winton Episcopus Iusticiarius noster vobis dicet ad fidem & commodum nostrum, ut honorem inde habeamus & Regni nostri status in melius commutetur unde merito ad perpetuas vobis teneamur gratiarum actiones. T. meipso apud Rupellam octavo die Martii.

Eodem modo scribitur omnibus Comitibus, Baronibus, & Magnatibus Angliæ Dat. eodem.

Reverendo Domino suo & patri Rot. Pat. 17 Johannis m. 16.
 Sanctissimo J. Dei gratia summo Rex mittit Domino Papæ pro
 Pontifici Johannes eadem gratia Rex Auxilio adversus Barones
 Angliæ, &c. Salutem & debitam tanto Angliæ.
 Domino ac patri Reberentiani. Cum
 Comites & Barones Angliæ nobis devoti essent antequam nos & nostram terram Dominio vestro subicere curassemus extunc in nos specialiter ob hoc sicut publice dicunt violenter insurgunt. Nos vero post Deum vos specialem Dominum & Patronum habentes defensionem nostram & totius Regni quod vestrum est esse credimus vestræ paternitati commissam. Et nos quantum

¶

in

in nobis est Curam & sollicitudinem
 istam vestrae reservamus Dominationi
 devotius supplicantes quatenus in ne-
 gotiis nostris quæ vestra sunt consi-
 lium & auxilium efficax apponatis ;
 prout melius videritis expedire Lato-
 res præsentium venerabiles Patres
 W. Burdegar & H. Dublin Archie-
 piscopos Magistrum R. Canō no-
 strum Abbatem Belli loci Magrūm
 P. Eboſ Ecclesiæ Præcentorem &
 H. Archidiacon & Magrūm de Arenio
 Canonū Eboſ, & nobiles viros J.
 Mareſcallum & G. Lutterell fideles
 nostros quos propter hoc ad pedes
 vestros transmittimus benignius ex-
 audientes. Nos enim super om-
 nibus quæ ad Nos & Regnum no-
 strum pertinent vices nostras & au-
 thoritatem Sanctitati vestrae commit-
 timus Ratū habituri & firmū
 quicquid inde cum consilio Nuncioꝝ
 nostꝝ duxeritis ordinandum. T.
 meipso apud Doveram 13. die Septem-
 bris.

Pat. 17 Johan-
 nis m. 15. dorso.
 Rex scribit Pa-
 pe ut succurrat
 ei quoniam unicū &
 Papæ.

Item Domino Papæ, &c. In con-
 spectu Paternitatis vestrae humiliamus

& singulare præsidium suū post Deum habuit in

ad gratias multiplices prout melius
scimus & possumus exhibendas pro
Cura & sollicitudine quam ad defensi-
onem nostram & Regni nostri Angliæ
Paterna vestra benevolentia indefi-
nenter apponit licet duritia Prælato-
rum Angliæ atque inobedientia mali-
tiose impediant piæ vestræ provisionis
effectum. Nos tamen pro effectu sin-
cero quem ad nos geritis clementiæ
vestræ devotius inclinamus qui etsi ad
præsens a superbis & a malevolis ad
insipientiam sibi censeatur inefficax
nobis erit Domino concedente ad tut-
coem & pacem & inimicis nostris con-
fessionem & terrorem inducit. Et li-
cet Dominus Pandulphus fidelis sub-
diaconus vester Norwicensis Electus
nobis pernecessarius esset in Anglia
ut pote qui honorem Ecclesiæ Romanæ
ac vestrum & totius Regni nostri fide-
liter & devote procurat quia tamen
nullo modo de statu nostro & Regni
Paternitas vestra certificari poterit
melius quam ipsum ad pedes vestros
eundem destinamus invitum devocius
supplices quatenus p ipsum specia-
liter & alios fideles nostros illatæ vobis
in persona nostra injuriæ veritate com-
perta ad Regimen Regni nostri &

nostræ observandum dignitatis paternæ manum sollicitudinis apponatis prout excellens vestra discretio viderit expedire quod per Dei gratiam laudabiliter facitis & fecistis pro certo habentes quod post Deum personam vestram & auctoritatem Apostolicæ sedis habemus unicum & singulare Præsidium & sub vestri confidentia patrocini respiramus. *Teste &c.*

Ror. Pat. 37 H.
3. m. 12. dorso.

Vide p. 35.
101, 102.

Noverint universi quod Dominus H. Rex Angliæ illustris R. Comes Norff. & Marecallus Angliæ H. Comes Hereford & Essex J. Comes de Warewico Petrus de Sabaudia cæterique Magnates Angliæ concesserunt in sententiam excommunicationis generaliter latam apud Westm̄ tertio decimo die Maii Anno Regni Regis prædict. 37. in hac forma scilicet Quod vinculo præfatæ sententiæ ligentur omnes venientes contra libertates contentas in Cartis comunium libertatum Angliæ & de Forresta Et omnes qui libertates Ecclesiæ Angliæ temporibus Domini Regis & Prædecessorum suorum Regum Angliæ optentas & usitatas scienter & Maliciose violaverint, aut infringere præsumpserint, & omnes illi qui pacem Domini Regis & Regni

& Regni perturbaverint, & similiter omnes qui jura & libertates Regis & Regni Diminuere infringere seu mutare præsumplerint. Et quod omnes venientes contra præmissa vel eorum aliqua ignorantur & legitime moniti infra quindenam post mentionem præmissam dictam transgressionem non emendaverint. Extant prædictæ sententiæ excoꝛcacionis subiacebunt Ita tamen quod Dominus Rex transgressionem illam per considerationem Curie suæ faciat emendari sciendum autem quod si in scriptis super eadem sententia a quibuscunque confectis, seu conficiendis aliud vel aliter appositum vel adjectum fuerit aut Articuli aliqui alii in eis contenti inveniantur Dominus Rex & prædicti Magnates omnes & communitas populi protestantur publice in præsentia Venerabilium Patrum B. Dei gratia Cantuariensis Archiepiscopi totius Angliæ Primatis. Recnon & Episcoporum omnium in eodem colloquio existent quod in ea nunquam consenserunt, nec consentiunt set de plano eis contradicunt. Præterea præfatus Dominus Rex in prolacione præfate sententiæ omnes libertates & consuetudines Regni nostri antiquas & utilitates

See p. 35.
ICI, 102.

Colloquium pro
Parlamento,
Spell. Gloss.
137.

& dignitates & iura Coronæ suæ ore proprio specialiter sibi & Regno suo salvabit & Excepit in cuius rei memori-
am & in posterum veritatis testimoni-
um tam Dominus Rex quam prædicti
Comites ad instantiam aliorum Mag-
natum & populi præsentium scripto
sigilla sua apposuerunt.

Rot. Pat. Val-
con. 37 & 38
H.3. m.4. n.21.
*De Magna
Carta tenenda.*

Rex Regina & R. Comiti Cornub.
salutem cum Nos, & omnes Magnates
& Prælati Angliæ iuraverimus & pro-
miserimus nuper apud Westm', quod
magnam Chartam nostram Angliæ in
omnibus articulis suis teneri firmiter
faceremus nos adhuc in eodem propo-
sito persistentes volumus & mandamus
quod Cartam illam super Sacramen-
tum singulorum Eliecomitum in singu-
lis Comitatus publice clamari facia-
tis & teneri, dum tamen prælati Mag-
nates & Prælati eam facti simili modo
de cetero a suis subditis Telle, &c.

Rot. Pat. 38 H.
3. m. 4.
Hiberniæ.
*Vide the ninth
Argument, p. 72-73.*

Rex Generabilibus in Christo Pa-
tribus omnibus Archiepiscopis, Epis-
copis, & Dilectis sibi in Christo Ab-
batibus, & Prioribus, & dilectis &
fidelibus suis universis Com Bar-
on Militibus & aliis fidelibus
suis Hiberniæ salutem Mittimus di-
lictum & fidelem nostrum filium J.
Galfri

Galfri Justiciarii nostrum Hiberniæ ad partes Hiberniæ ad Exponendum vobis Statum nostrum & terræ nostræ Vascon & Pericula Nobis imminetia & ad tractandum Vobiscum super Auxilium nobis faciendū contra Regem Castell qui dictam terram nostram Vascon in Manu forti in Quindennam Pasche primo futurū hostiliter est ingressurus vobis Mandantes quod eidem Justiciario nostro in hiis quæ nobis ex parte nostra super prædicto auxilio perquirendo intimabit fidem adhibeat. In cuius &c. T. A. Regina nostra & R. Comes Cornub apud Westm. ij. die Febr. per Regem.

Rex Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comiti Baroni, Militibus Liberis hominibus Civibus Burgenfibus, & omnibus aliis fidelibus suis terræ suæ Hiberniæ salutem Mittimus fratrem Nicholaum de Sancto Neoto fratrem Hospiti Sancti Johannis Jerusalem in Anglia ad partes Hiberniæ ad Exponendū vobis una cum J. Galf. Justiciario nostro Hiberniæ Statum nostrum & terræ nostræ Vascon & Pericula nobis imminetia de hostili adventu Reg.

*Ibidem.
Hiberniæ.*

Castell qui Nullo jure set Potentia
sua confusus terram nostram Cal-
cofi per ipsius fortitudinem a Mani-
bus nostris auferre & a Domino Regni
Angliæ segregare proponit Universita-
tem vestram quantum possumus af-
fectione Rogantes quatenus nos & jura
nostra taliter indefensa non deserentes
nobis in tanto periculo constitutis
quantumcunque in Mundo poteritis
de Gente & Pecunia ad prædictæ terræ
nostræ defensionem quam prædictus
Rex in Manuforti in estate prox.
futurè hostiliter est ingressurus subve-
niatis quod in vestrum honorem Acri-
tetur sempiternum cum ex contrario
huius Negotii eventu non tantum
nobis set singulis Regni nostri & terræ
nostræ Hiberniæ ——— & rerum
dampnum imineat periculosum Vobis
nostris Augustis taliter compatientes
quod nos & hæredes nostri vobis &
hæredibus vestris Sumus non imme-
rito obligati In cuius ec. Teste a
Regina & R. Com. Cornub. apud Wind-
sor xviij. die Februarii per Regi-
nam.

Rex

Rex omnibus &c. Cum pro Nego-
tis nostris arduis Regnum nostrum
contingentibus proceres & fideles Regni
nostrī ad nos London in Quindena
Pasche prior. praterit faceremus con-
vocari & cum de Negotiis supradictis
maxime de prosecutione Negotii Si-
ciliæ diligenter cum eisdem tractare-
mus Ac ipsi nobis responderint quod
si statum Regni nostri per Concilium
fidelium nostrorum rectificand dux-
erimus Et Dominus Papa conditio-
nes circa statum Siciliæ appositos
melioraverit per quod Negotium illud
prosequi possemus cum effectu ipsi dili-
gentiam fideliter apponent erga com-
munitatem Regni nostri quod nobis
Commune auxilium ad hoc præstetur
Nos eis concessimus quod infra festum
Natalis Domini proximum futurum
per consilium proborum & fidelium
hominum nostrorum Regni Angliæ
unacum consilio Legati Domini Papæ
si in Angliam medio tempore venerit
statum Regni nostri ordinabimus &
ordinationem illam firmiter observabi-
mus & ad hoc fideliter observand sup-
ponimus Nos coercioni Domini
Papæ ut nos ad hoc per Censuram
Ecclesiasticam prout expedire viderit
valeat

Rot. Pat. 42 H.

3. m. 10.

*Pro Regi &
Baronagio An-*
gliæ.

Nota, the dif-
ferent deno-
minations of
the Parliament
or Common
Council of this
year.

1. *Proceres &
fideles Regni.*

2. *Baronagium*
Angliæ.

3. *Parliamen-*
tum, Rot. Pat.

42 H. 3. m. 3.
 n. 9.

4. *Hans homes*
& prodes ho-
mes & Co-
mune de
Beaume.

Rot. Pat. 42 H.
 3. m. 4. vide

pa. 35.

valeat ardare protestamur etiam quod
 Edwardus filius noster Primogenitus
 præstito Sacramento corporali per Li-
 teras suas concessit quod omnia su-
 perius expressa quantum in ipso est
 fideliter & inviolabiliter observabit &
 impium observari procurabit In-
 cusus &c. Hiis Testibus Edwardo filio
 nostro Primogenito Galfr de Lazing,
 Willielmo de Valenc scribis nostris P.
 de Sabaudia, Johanne de Pless. Com.
 Mart Johanne Maunsell Thesaur
 Ebor Henrico de Wingham decano
 Sancti Martini London, Petro de Rivall
 Guidone de Rocheford, Roberto Fitz-
 walter pntibus & multis aliis Com Bar-
 onibus Regni nostri Dat. apud Westm.
 7. die Maii.

Rot. Pat. 51 H.
 3. m. 16
*De pace inter
 Regem & R. Co-
 mitem Glouc.*
*Nota. In those
 ancient times
 Pardons by
 Parliament,
 wherein the
 Commons gave
 their Counsel
 and Assent,
 were thought
 safe and requi-
 site.*

*Nostre Seignior le Roy per le conseil
 & l'assentement de le Roy de Alemain
 & de Countes & de Barons & del
 Comun de la terre pardone & relese a
 ceans de la meenee le Counte & a touz
 ceux de sa Compaignie ou que il scient ou
 eient este &c. En tesmoin de ceste chose
 nostre seignior le Roy de Angleterre &
 le Roy de Alem cest escrit unt mis leur
 seans Donne a Estratford le quinzime jour
 de Juny le ann Cynquant premer.*

Henry

Henry per la grace dieu &c. per le
conseil & le assentement nostre cher
frere le Roy de Alein e Cundes e de
Bartun le Comun de nostre terre
avous pardone quite & relese a tuz
cens de Londres totes maneres de Ire &
de ranson & de male volente &c. E
avoms graunte & otree a touz cens
avantnoms que mal ne damage ne lour
ferroms ne sufferoms estre fet, E ke il
ne sient encheisonex ne enquerelez pur les
choses avantditz En tesmoign de cestes
Nos & le Roy de Alein a cest escrit avoms
mis nos seans Danne a Estratford le
Cessime jour de Juy n lan de nostre Regne
Cynquante premier.

ibidem.

Rot. Pat. 7 E.
2. pars 1. m. 9.
Quod nullus
imprisonetur
&c. pro morte
Petri de Ga-
veston. Purten
est & grante
per Nos & per
Eveques,
Ab-

bas, Priors, Countes, Barons, & per tote la Comunalty de nostre
Roialme a nostre Parlement &c. uniment assentur est & accordez that
all that had a hand in the death of Pierce Gaveston should be
pardoned.

Rot. Pat. 12 E. 2. m. 17. De Perdon, pro Com. Lanc. The King in
Parliament pardoned the Earl of Lancaster. Consensientibus Prelatis
Præcipuis & Communitate Regni ibidem Congregatis.

Rot. Pat. 1 E. 3. m. 8. Andrew de Hethford, who was a principal
Citizen of London, and a villainous Instrument of the two Spencers in
E. 2. time, was de assensu Prelatorum Comitum & totius Communitatis
Regni in Parlamento, pardoned all Homicides, Robberies, Burglaries,
Felonies, Appeals, &c.

Rot. Pat. 1 E. 3. m. 23. De pordonatione pro Communitate Civitatis
London. De assensu Prelat. Com. Bar. & totius Communitatis Regni pro
homicidiis rebell. &c. ad sectam Regis, & de Appellis per quoscunque
illatis.

*Penes Rememo-
rator Domini
Thes. in Sacco.*

Inter Communia Brevia de
Termino Sanctæ Trin.
Anno Regni Regis E. 1.
xxxiiij.

Recorda.

*Anglia de Aux-
ilio concessio
ad Miliciam
fil Regis.*

*Anno 34 E. 1.
Consil. Intra-
cio de eodem
Termino penes
Rememorator.
Regis in sacco.
Rot. 40.
Vide pa. 94.*

Memorand quod cum nuper
Dominus Rex ordinasset quod
Edwardus filius suus Primogenitus in
festo Pentecostes Anno Regni sui
Tricesimo Quarto Cingulo Milicie
decoraretur Et mandatum esset Ar-
chiepiscopis, Episcopis, Abb'ibus, Prio-
ribus, Comitibus Baronibus, & aliis
Magnatibus Regni quod essent coram
ipso Domino Rege & Concilio suo
apud Westmon in Crastino Sanctæ Tri-
nitat. proximo sequent ad tractand
& ordinand de auxilio Regis faciendo
ad Miliciam predictam & ad Consen-
ciend hiis quæ ulterius Ordinarentur
in hac parte vel quod procuratores aut
attornatos suos sufficienter instructos
ad

ad premissa loco eorum facienda mitterent tunc ibidem.

Ac etiam preceptum fuisset singulis Vicecomitibus Angliæ quod eorum quilibet venire faceret de Com. suo ad prefatos diem & locum duos Milites & de qualibet Civitate Ballivæ suæ duos Cives, & de quolibet Burgo ejusdem Ballivæ suæ duos Burgenses, &c. ad tractand ordinand & consentind sicut prædictum est.

Venerunt personaliter coram Rege & Consilio suo apud Westm ad diem illum Antonius Bek Patriarcha Ierosolomitani Episcopus Dunolm W. de Langeton Coventr & Lich. Radus de Baldok London Episcopi, H. de Lacy Comes Linc J. de Warrenna Comes Surf R. de Monte Hermer. Comes Gloucestr & Hertf. H. de Boun Comes Hereford G. de Bello Campo Comes War Robertus filius Walteri Hugo le Despenser Johannes de Hastings Hugo de Veer Willielms Martyn, Henr le Tyeys, Johannes Lovell, Rogerus de Mortuomari, Johannes de Mohun, Alanus la Zouche, Wil's de Leyburn, & Robertus de Burghersh, Custos Quinque Portuum cum quibusdam Baronibus Portuum eorundem.

Nota.

Bar. quinque
Portuum.

Ac

Ac etiam per Procuratores & Attor-
 natos Robertus Cantuar' & Wilts
 Eborum Archiepiscopi Thom' Exon'
 Richardus Hereford, Johannes Wynton,
 Johannes Cicestr', Thom' Roffe', Ro-
 bertas Elyen, Johannes Norwyceen,
 Johannes Lincoln', Simon Sarum, Wilts
 Wygor', Walterus Bathon, & Wellen,
 & Johannes Karliol Episcopi Abbates
 Westmon', Sancti Edmundi, Sancti Au-
 gustini Cantuar', Sancti Albani, Glastonie,
 Burgh Sancti Petri Rammeseye, Thor-
 neye, Seleby & Malmesbury, Sancti Petri
 Gloucest', Rogerus Comes Norff. &
 Marst. Angliæ Thom' Comes Lancast',
 Edmundus Comes Arundell, & quam
 plures alii Prælati Magnates, & Pro-
 ceres Regni Necnon de quolibet Co-
 mitatu Regni ejusdem duo Milites & de
 qualibet Civitate duo Cives & de quo-
 libet Burgo duo Burgenses electi per
 Communitates Comitatum Civita-
 tum & Burgorum eorundem ad præ-
 missa loco Communitatū eorundem
 tractand' ordinand' & consencienti' simi-
 liter venerunt.

Nota.

Quibus

Quibus prædictis omnibus Congregatis coram consilio Regis prædicto ipsique ostenso per idem Consilium ex parte Regis quod de jure Coronæ Regiæ auxilium Domino Regni fieri debuit in casu prædicto Ac etiam quod expensæ multiplices & alia quam plura onera eidem Domino Regi Incumbent ad rebellionem & maliciam Roberti de Brus proditoris ipsius Domini Regis & sibi in Partibus Scotiæ adherentiam qui aduersus ipsum Regem jam in illis partibus guerram movere præsumperunt reprimendas.

Not the Council here meant, was all the great Officers of State, the Judges and others the Kings learned Council in Parliament.

Idem Prelati Comites, Barones, & alii Magnates, necnon Milites Comitatum tractatum super hoc cum deliberatione habentes considerantésque auxilium deberi ut prædictum est & quam plura onera Regi incumbere propter guerram prædictam tandem unanimiter Domino Regi concesserunt pro se & tota Communitate Regni tricesimam partem omnium bonorum suorum temporalium mobilium quæ ipsos habere continget in Festo Sancti Michaelis prox. futuræ habendam pro auxilio eidem Domino Regi competente ad Miliciam filii sui prædicti ac etiam in Auxilium Misarum quas ipse est facturus circa guer-

Nota, in the ensuing Record the Milites Comitatum, and Barones Quinque Porcum are comprehended under the words Magnates Regni.

guerram prædictam Ita tamen quod ista concessio ipsius vel eorum successoribus aut hæredibus futuris temporibus Nullatenus cedat in præjudicium, nec in casu huiusmodi trahatur in exemplum Et quod in taxando bona prædicta excipiantur omnia que in taxatione Antedecime a Communitate Regni Domino R. anno Regni sui xliiij concessæ propter exilium Judeorum fuerunt excepta.

Cives quidem & Burgenſes Civitatum ac Burgorum prædictorum ac cæteri de Dominicis Reg. congregati & super præmissis tractatum habentes confidentesque onera Domino R. incumbentia ut præmittitur eidem Domino Regi unanimiter concesserunt ob causas supradictas vicesimam partem bonorum suorum mobilium habend. ut prædictum est.

*Inter Communia
Brevia de Termino S. Michaelis Anno 34 E.
1. penes Rememorator. Domini Theſaurarii in Scaccario.*

Memozandum quod ad Crassinum Sanctæ Trinitatis prior. præteritum Prælati & cæteri Magnates Regni pro se & tota Communitate ejusdem Regni concesserunt Domino Regi Tricesi-

Nota, in the former Record Prælati, Comitiss, Barons, & alii Magnates, necnon Milites, Comitatum granted a joint aid to the King, and here it is said, that the Prælati & cæteri Magnates Regni gave it, so as the Knights of the Counties, and Barons of the Cinque Ports are comprehended under the name Magnates.

man

nam bonorum suorum omnium tem-
poralium extra Civitates Burgos &
Dominica Domini Regis, & Cives,
& Burgenses, & Tenentes Dominio-
rum predictorum succedant bonorum
suorum tam ad militiam Edwardi filii
Regis predicti quam ad subsidium de-
fensionis terræ Scotiæ contra Rober-
tum de Brus & ipsius Complices ini-
micos Regis, &c. Et forma concessio-
nis supradictæ plenius annotatur in
memorandis anni precedentis Termi-
ni Tria. Et subscripti venientes modo
hæc concesserunt satisfacere Regi pro
Celsissima & Illustrissima predictis ipsos
contingentibus ut patet subsequen-
ter.

N

Com-

*Penes Rememo-
rator. Domini
Regis in Scacc'.*

**Communia de Termino
Sancti Hillarii Anno
xvij E. 3.**

Recorda.

*warr. de Pri-
ore de Coventr.
attach. pro
transgression.
Vide pa. 34.*

Prior de Covent' attachatus fuit
ad rendend. Domino Regi de
servicio octo feodorum militum per
ipsam Priorum & Predecessores suos
Regi & Progenitoribus suis ab Anno
29. Domini Regis H. Proavi ipsius
Regis nunc substracto & concealato Et
ipse Prior per Henricum de Stretford
Attoz suum venit. Et super hoc quia
Barones plene volunt informari pro
Rege per Rotulos & Memoranda
Sacri de quibusdam negotiis prae-
dictum tangentibus antequam ec.
Datus est dies eidem Priori hic ex
assensu Willielmi de Thorpe servientis
Regis a die Pasche in quindecim dies
eo statu, ec. Ad quem diem Prior venit
Et quia nondum plene scrutinium, ec.
Datus est dies eidem Priori ex prae-
fixione

firione Cui in Octabas Sancte Trini-
 tatis eo statu, &c. Et interim facto
 scrutinio Rotulorum &c. Compertum
 est in Rotulo 29. Regis Henrici Tertii
 sub titulo De Auxilio ad primogeni-
 tam filiam Regis maritandam videlicet
 de quolibet scuto xx s. contineri sic
 Prior de Coventi reddit compotum de
 decem libris de decem feodis de quibus
 quidem decem libris Willielmus Trussell
 Vicecomes dicti Comitatus in Compoto
 suo de Anno 32. ipsius Regis Henrici
 oneratus fuit inter alia debita quæ
 debebat in fine ejusdem Compoti sicut
 continetur in magno Rotulo de eodem
 Anno 32. & in rotulo 31. ejusdem Re-
 gis Henrici compertum est etiam in
 quodam Rotulo Compotorum titulato
 Auxilium Episcoporum Abbatum Prio-
 rum concessum ad sororem Regis Hen-
 ricus maritandam Fredirico Imperatori
 videlicet de quolibet scuto duas marcas
 contineri in hunc modum Prior de
 Coventi reddit compotum de viginti
 marcis de eodem. In Thesaurario octo
 marcas Et debet duodecim marcas
 de quibus respondet in Mark in Ro-
 tulo 34. Et in eodem rotulo 34. requi-
 rebantur de ipso Priore quindecim
 marce de auxilio ad transfretationem

Regis in Vasconiam & duodecim mar-
 ca de auxilio ad sororem Regis mari-
 tand. De quibus quidem duobus
 debitis Idem Prior postmodum Regi
 satisfecit sicut continetur in rotulis
 annalibus de annis 36. 39. & 40. dicti
 Regis Henrici Tertii. Item comper-
 tum est in rotulo de servicio Regis
 Edwardi filii Regis Henrici Summo-
 ni apud Rothelan die dominica in
 crastino Sancti Petri ad vincula Anno
 Regni sui decimo contra Lewelinum
 filium Griffini & David fratrem ejus
 & alios Walenses quod Prior de Co-
 vent recognovit servicium duorum feo-
 dorum Militum pro quo finem fecit
 Et in rotulo de finibus factis pro ser-
 viciis Scotia Anno ejusdem Regis
 Edwardi tricesimo primo annotatur
 quod Prior & Conventus de Covent
 recognoverunt servicium duorum feo-
 dorum militum & finem fecerunt per
 quadraginta libras Et in Rotulo de
 finibus pro serviciis Scotia Anno 34.
 ejusdem Regis Edwardi filii Regis
 continetur quod Prior de Covent per
 fratrem Johannem Holeweye Commo-
 nachum & Atornatum suum recogno-
 vit servicium duorum feodorum Mi-
 litum & finem fecit pro eodem per
 qua-

quadraginta marcas. Et inter fines factos in Scaccario coram tenente locum Thesaurarii & Baronibus pro serviciis Regi debitis in exercitu Scotia Anno Regis Edwardi filii Regis Edwardi septimo videlicet pro servicio unius feodi viginti marcas continetur quod Willielmus Herle & Robertus de Leicestr. finem fecerunt cum Rege pro Prioro de Coventr. pro servicio duorum feodorum militum per quadraginta marcas. Et predictus Prior ad predictas octabas Trinitatis venit ut prius per Attornatum suum predictum Et Willielmus de Thorp, & Johannes de Stoford Servientes Regis veniunt pro Rege. Et super hoc expositis prefato Priori hiis quæ per scrutinium Rotulorum inveniuntur ut supra & per ipsum Priorem auditis & intellectis iidem servientes Regis petunt quod idem Prior super hoc respondeat, &c.

Et predictus Prior dicit quod ipse & *Prium Prioris.* predecessores sui tenuerunt omnia terras & tenementa sua tam videlicet ea quæ habet in dominico quam in servicio per servicium duorum feodorum militum tantum. Et quod Dominus Rex seu Progenitores sui de aliquibus aliis serviciis per ipsum Priorem seu
 Præ-

Appendix.

Predecessores suos nunquam seisis fue-
 runt per finem seu serbicum per cor-
 pora hominum factum quod liquere
 poterit per Remiganda hujus Scac-
 carii si fiat inde scrutinium, &c. Et
 quoad hoc quod compertum est hic in
 rotulis, &c. Quod tempore dicti Regis
 Henrici tertii computatum fuit de cer-
 tis pecunie summis de auxiliis eidem
 Regi Henrico ad filium suum Militem
 faciendum & sororem suam maritan-
 dam concessis. Hoc ei non prejudi-
 cat in hac parte. Dicit enim quod
 Auxilia illa non fuerunt nec cense-
 ri possunt esse serbicia immo quedam
 subsidia per Magnates & Communitatem
 Regni spontanea & mera voluntate
 Regi concessa & tam de tenentibus alio-
 rum quam de tenentibus de Domino
 Rege in Capite levanda quo pretertu
 dictus compotus de auxiliis predictis
 fuit tam pro feodis tenentium tunc
 Prioris loci predicti quam pro feodis
 ipsius Prioris propriis, quod idem
 Prior dicit posse liquere Curia per
 Certificationem tunc Prioris loci pre-
 dicti tunc Baronibus de Scaccario de
 mandato Regis Henrici factam de
 feodis que ipse tunc Prior tenuit de
 veteri feoffamento & de novo super
 quo

quo verificatum fuit quod feoda que
dictus tunc Prior tenuit in Dominico
& feoda que tenentes sui de ipso tenu-
erunt fuerunt in toto decem feoda, &c.
Et petit iudicium desicut ipse tenet
omnia terras & tenementa sua per ser-
biciu duorum feodorum Militum tan-
tum, nec sit compertum hic penes
Scaccarium quod Dominus Rex seu
Progenitores sui de aliquibus aliis seu
pluribus serviciis per manus dicti Pri-
oris seu Predecessorum suorum unquam
seisis fuerunt si ipse de aliquo feodo seu
huiusmodi servicio conceleto impetiri
seu calumpnari debet in hac parte.
Et super hoc quia dicti serbientes
Regis volunt super responso suo deli-
berare, &c. datus est dies eidem Pri-
ori hic in octabas Sancti Hillarii eo
statu, &c. Ad quem diem predictus
Prior venit & ob eandem causam qua
prius datus est ei dies ulterioz hic a
die Pasche in quindécim dies eodem
statu quo prius. Ad quem diem idem
Prior venit & ob dictam causam adjor-
natur ulterius usque quindenam
Sancte Trinitatis eo statu, &c. ad quem
diem veni & datus est ei dies ulterius
usque octabas Sancti Michaelis anno
viz. decimo nono Regis huius eo
statu

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